

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) 2:14-CR-93  
 )  
JACK WEICHMAN, )  
 )  
Defendant. ) Vol. 2 of 2

TRANSCRIPT OF SENTENCING HEARING  
May 7, 2018  
BEFORE THE HONORABLE PHILIP P. SIMON  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

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FOR THE DEFENDANT:

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ALSO PRESENT: David Beier, U.S. Probation  
Brian Visalli, IRS  
Jason LeBeau, FDIC-OIG

1 (The following proceedings were held in open court  
2 beginning at 10:01 a.m., reported as follows:)

3 **DEPUTY CLERK:** All rise.

4 **THE COURT:** You can be seated. Okay. Everybody  
5 ready to proceed?

6 **MS. BERKOWITZ:** Yes, Your Honor.

7 **MR. GURLAND:** Yes, Your Honor.

8 **THE COURT:** All right. Doctor, you are still under  
9 oath, to just remind you.

10 Ms. Berkowitz, I think we left off with you examining the  
11 witness.

12 **REDIRECT EXAMINATION**

13 **BY MS. BERKOWITZ:**

14 **Q.** Good morning, Dr. Ashbach.

15 **A.** Good morning.

16 **Q.** Dr. Ashbach, when you were being cross-examined by  
17 Mr. Gurland, you made a statement that Mr. Gurland didn't  
18 follow up on but that I would like to. You said you had a  
19 recent meeting with Centier Bank; do you remember that?

20 **A.** I went to Centier Bank recently to get copies of that 2002  
21 loan -- or the 2002 loan documents. I didn't actually have a  
22 meeting. I just went to get the papers.

23 **Q.** You are getting those papers, are you not, because you are  
24 in the process of developing a lawsuit against Centier Bank,  
25 aren't you?

1 A. I hope to, yes.

2 Q. And the lawsuit that you are contemplating against Centier  
3 Bank is as a result of your being defrauded by Jack Weichman as  
4 to those lines of credit that you did not authorize or know  
5 about, isn't that true?

6 A. That's true.

7 Q. So there's no dispute, is there, Doctor, that you did not  
8 authorize or know about the 2006 or 2008 lines of credit, or  
9 the 2002, for that matter?

10 A. I did not know about them, no.

11 Q. At the time that they were taken out?

12 A. Yes.

13 Q. And you only subsequent -- after the lines had been  
14 exhausted and you had to renew, then you were informed about  
15 those lines of credit, is that correct?

16 A. I was informed later, yes.

17 Q. Dr. Ashbach, I want to show you what's been marked and  
18 provided to defense counsel as Visalli No. 2.

19 MS. BERKOWITZ: If I may have the ELMO, please, Noel.

20 Q. Were you aware, Dr. Ashbach, that on April 24<sup>th</sup>, 2008,  
21 from the line of credit there was a \$50,000 -- \$50,000 was  
22 disbursed to Jack Weichman and spent at the Ameristar Casino?

23 A. No, I did not.

24 Q. Is this the first time that you have seen this?

25 A. Yes.

1 Q. Now, do you recall telling Agent Visalli on May 6<sup>th</sup> that  
2 you believe that Jack Weichman would put papers in with other  
3 papers to have you unknowingly sign things?

4 A. I did say that, yes.

5 Q. And is that still your opinion?

6 A. Yes.

7 Q. And do you recall on August 10<sup>th</sup> of 2010 -- or do you  
8 recall on August 10<sup>th</sup> of 2010, or somewhere near that time,  
9 asking Bill Bercaw why your Centier brokerage account was tied  
10 up?

11 A. I don't remember that, no.

12 Q. Do you recall ever asking Bill Bercaw about your Centier  
13 brokerage account?

14 A. Yes, I did.

15 Q. Do you recall getting an answer from Bill Bercaw regarding  
16 your Centier brokerage account?

17 A. He would have to get Jack's approval to tell me about it.

18 Q. Did he ever tell you anything directly?

19 A. Eventually I was given copies of my brokerage account, but  
20 I don't remember when that was.

21 Q. Do you know if that was after your meeting with Brian  
22 Visalli where he told you all that money was missing from your  
23 brokerage accounts?

24 A. Oh, heavens, no. That was years earlier.

25 Q. Years earlier.

1 Did you deal with Linda Einterz at Weichman and Associates  
2 at all?

3 A. Yes.

4 Q. Okay. And did she handle your personal finances?

5 A. Yes, she did.

6 Q. Okay. Do you know if she kept a spreadsheet of all the  
7 payments that were coming out of assets belonging to you?

8 A. She kept spreadsheets of all the monies that I spent. I  
9 don't know if she had copies of all my assets.

10 MS. BERKOWITZ: Can we switch to the computer, to  
11 Search Warrant 23.

12 Q. Now, this is in December of 2012. Do you recall having a  
13 conversation with Linda Einterz regarding your Centier -- money  
14 that's coming out of your Centier account?

15 A. No, I don't remember. I'm sorry.

16 MS. BERKOWITZ: If I could have one moment,  
17 Your Honor.

18 Can we take a look at Search Warrant 110.

19 Q. Dr. Ashbach, have you ever seen this document before?

20 A. I don't remember.

21 Q. Did anyone ever give you a copy of this document?

22 A. I -- if they gave me a copy, I probably would not have  
23 taken it. It was not my habit to take papers like this from  
24 the office.

25 Q. When you say, "from the office," are you talking about

1 Jack Weichman's office?

2 A. Yes.

3 Q. But you don't recall -- you have no recollection of seeing  
4 this particular document?

5 A. I don't remember this, no.

6 Q. This is fairly detailed. Do you recall having any kind of  
7 detailed conversation with Linda Einterz or Bill Bercaw or  
8 Jack Weichman, for that matter, regarding your finances, your  
9 brokerage accounts, your retirement account, checking account;  
10 do you recall ever having that kind of a conversation?

11 A. I'm pretty certain I never had such conversation.

12 MS. BERKOWITZ: We can go back to the ELMO.

13 Q. Now, I'm showing you what's been marked as Defense  
14 Exhibit 15. This is the agreement that Mr. Gurland was talking  
15 about with you.

16 This is the one that you ended up signing -- very last  
17 page of the document -- it looks like April 18<sup>th</sup> of 2018.

18 This is not the document that was drafted or created by  
19 Tom Kirsch, is it?

20 A. No.

21 Q. This is the document that was drafted and created by  
22 Mr. Gurland, isn't that true?

23 A. Correct.

24 MR. GURLAND: Objection, Your Honor. Misstates  
25 testimony in fact.

1                   **THE COURT:** Overruled.

2                   **BY MS. BERKOWITZ:**

3                   **Q.**     Was it Mr. Gurland's idea to refer to you and Mr. Weichman  
4                   in this agreement or contract as David and Jack?

5                   **A.**     I -- I don't know for sure.

6                   **Q.**     Was that your idea?

7                   **A.**     Certainly not, but I -- you know, I have very little legal  
8                   experience, so I would not have known that a more formal  
9                   mention of us should have been used.

10                  **Q.**     Okay. Let's take a look at paragraph C -- I'm sorry. It  
11                  is a whereas paragraph.

12                  No, I'm sorry. Who wrote each of these paragraphs, the  
13                  whereas paragraphs; who wrote those?

14                  **A.**     I thought those were written in conjunction between  
15                  Mort Efron and Jamie Driscoll and Jack's attorneys.

16                  **Q.**     Okay. So this paragraph: "Both parties acknowledge that  
17                  based on Jack's withdrawals of money held in David's bank and  
18                  investment account over many years, monies are owed by Jack to  
19                  David."

20                  How much money do you understand being owed to you,  
21                  Doctor?

22                  **A.**     I've heard various sums. I don't know specifically. The  
23                  most I've heard is between six and seven million, and the least  
24                  I have heard is 2.4 million.

25                  **Q.**     How about this next whereas paragraph: "During the course

1 of their long-standing relationship, David expressed to Jack on  
2 many occasions that Jack could use David's assets and  
3 guarantees for Jack's personal use with David's prior  
4 knowledge."

5 **A.** I agreed upon that term because of the additional -- that  
6 was one of the whereases that was originally struck from the  
7 agreement, and Jack's attorney really wanted that in there, so  
8 I agreed to it provided they put in there "with David's prior  
9 knowledge," because there was no prior knowledge.

10 **Q.** So, Doctor, was there ever an instance, with respect to  
11 the Centier credit lines or the brokerage account, the Centier  
12 brokerage account or those retirement accounts, where  
13 Jack Weichman came to you and gave you prior knowledge that he  
14 was going to take your money?

15 **A.** Well, I don't remember any such event.

16 **Q.** Well, Doctor --

17 **A.** I don't remember ever giving consent or having prior  
18 knowledge. Jack has challenged me and just told me I just  
19 don't remember.

20 **Q.** When was the last time Jack told you that you don't  
21 remember that you gave him permission to get that Centier line  
22 of credit?

23 **A.** Maybe about a week ago.

24 **Q.** Is that something that Jack Weichman would do on a regular  
25 basis with you since the Indictment: Oh, David, you don't



1 remember; you gave me permission, David; don't you remember  
2 giving me permission for the line of credit?

3 A. I have heard that several times.

4 Q. Tell us, Doctor, why did you enter into this agreement,  
5 Defense Exhibit 15? Why?

6 A. I did so upon recommendation of my attorneys for me to  
7 recover at least something of what I had lost.

8 Q. Did you fear that you wouldn't recover anything if you  
9 didn't sign this agreement?

10 A. Well, it wasn't a fear. I just never expected to recover  
11 anything.

12 Q. Did you do this to protect yourself and your family?

13 A. Not -- not -- not especially. My attorneys were insistent  
14 that I should do this so that I would get something in return.  
15 They knew that I was struggling to exist from day to day.

16 Q. Now, are you aware, Doctor, that you're getting an  
17 interest -- I think we went through this last time -- you are  
18 getting an interest --

19 MR. GURLAND: Your Honor, we did go through this last  
20 time. I know you are giving her wide latitude, but a lot of  
21 this is not disputed.

22 THE COURT: I'm going to allow her to proceed with  
23 this. Go ahead.

24 BY MS. BERKOWITZ:

25 Q. Doctor, you have taken an interest -- a 25-percent

1 interest in whatever Jack Weichman owns in Woodhalapenos and  
2 JAW Venture?

3 **A.** Actually, it is half of what Jack owns, 25-percent  
4 interest.

5 **Q.** Right. I think we had this conversation before.  
6 Mr. Weichman owns 50 percent. You are taking 25 percent of  
7 that 50 percent of each of those entities, is that right?

8 **A.** No, I'm taking 50 percent of his 50 percent.

9 **Q.** Okay. Okay. All right. With respect to those entities,  
10 were you aware that in 2013, 2014 and 2015, neither one of them  
11 made a profit?

12 **A.** That's not surprising.

13 **Q.** So were you aware of that at the time you entered into  
14 this agreement?

15 **A.** No.

16 **Q.** Now, again, on cross-examination by Mr. Gurland, he spent  
17 a fair amount of time going through some documents with your  
18 signature, or what he purports to be your signature.

19 I'm going to show you what's been admitted as Defense  
20 Exhibit 10. Do you recall going through this document with  
21 Mr. Gurland?

22 **A.** Yes, last Thursday.

23 **Q.** Okay. Now, just -- you said that you only got two pages.  
24 This is your financial statement, right?

25 **A.** Yes.

1 Q. Or it is a financial statement. And it is for December,  
2 for the -- as of December 31<sup>st</sup>, 2008?

3 A. When the -- it was presented to me that I needed a  
4 financial statement to continue all of the various banking  
5 arrangements that even Nephrology Specialists had with the  
6 banks, or Northwest Indiana Nephrology had with the banks, or  
7 the joint venture had with the banks, and I therefore had to  
8 have a financial statement.

9 And the financial statements were prepared by  
10 Mr. Weichman's office, and I signed them. But there was never  
11 any discussion about the financial statements.

12 Q. Okay.

13 A. And all that I remember seeing was the first two pages.

14 Q. Okay. And you told Mr. Gurland that when you were being  
15 cross-examined last week, correct?

16 A. Yes.

17 Q. All right. So taking a look at this financial statement  
18 that supposedly covers your financial condition as of  
19 December 31, 2008, and down at the very bottom of the page it  
20 identifies -- it says "Personal bank accounts carried at."  
21 Doctor, do you see anywhere on that page a reference to Centier  
22 Bank?

23 A. No.

24 Q. And this is signed -- there's a signature. Now, do we  
25 know, is this -- well, there's a signature that purports to be

1 your signature dated 2/27/09.

2 A. It looks like my signature.

3 Q. Okay. Now, down below under Schedule F, it has names of  
4 banks or finance companies where credit has been obtained. Do  
5 you see -- and there's a space there to put a name, but there's  
6 no name on there, is there? Do you see Centier Bank --

7 A. No.

8 Q. -- anywhere?

9 I'm going to show you another defense exhibit that  
10 Mr. Gurland went through with you last week, Defense Exhibit 6.  
11 Very tiny print, I'm sorry, Doctor, but do you know what this  
12 document is saying?

13 A. I'm sorry, no.

14 Q. Would it surprise you if I told you that this document is  
15 your agreement, your alleged agreement with Centier Bank that  
16 your securities are going to be held by them for that line of  
17 credit that was taken out in your name?

18 A. I know that my securities were held by Centier Bank for a  
19 loan. I do know that.

20 Q. But you don't remember signing this document?

21 A. No.

22 Q. Okay. You certainly don't remember reading it; would that  
23 be fair to say?

24 A. I know that I did not read it.

25 Q. And why would that be?

1     **A.**     Generally because -- for several reasons. One, it is  
2     language I don't understand very well. Two, it is difficult to  
3     read. Three, I -- at the time that I signed it, I can recall  
4     that I would run into the office, that's Jack's office, sign  
5     papers like this; but I really didn't have a lot of time to  
6     understand or review these documents. I simply took either  
7     Jack's word or one of his employee's word that the paper was  
8     appropriate and that it needed to be signed and that everything  
9     in it was in my best interest, and so I signed it.

10    **Q.**     Now, taking a look at the very top of the document, I  
11    don't know if you can read this, but it says August 2, 2007.  
12    Doctor, do you recall ever having a conversation with anyone at  
13    Weichman and Associates, Linda Einterz, Bill Bercaw, or the  
14    defendant, for that matter, prior to or on August 2<sup>nd</sup> of 2007  
15    regarding your securities, your DaVita stock, being used to  
16    secure a line of credit in your name that the defendant used?

17    **A.**     I don't remember, no.

18    **Q.**     Now, counsel was asking you, well, your signature appears  
19    down here, is that right, your signature right there?

20    **A.**     Yes, that's my signature.

21    **Q.**     Doctor, do you know if this is one of those taped-on  
22    signatures like we saw last week?

23    **A.**     I would be pretty certain that that's my signature.

24    **Q.**     Okay. But do you know if that might be your signature  
25    that got taped onto a document at some later time?

1     **A.**     The only thing I can tell you is that I know that I never  
2     met with any bank official, and their signature is on there.

3     **Q.**     So there's a signature of someone named James Bryant, a  
4     vice president. You don't recall ever meeting with anyone at  
5     Centier Bank?

6     **A.**     No.

7     **Q.**     And you don't recall ever signing any documents at Centier  
8     Bank, do you?

9     **A.**     I never signed any documents at Centier Bank. They were  
10    all signed at Jack's office.

11    **Q.**     And by the way -- let's take a look at Defense Exhibit 7.  
12            This is the UCC agreement. Do you remember going through  
13    that with Mr. Gurland last week?

14    **A.**     Yes, 'cause I remember I didn't know what a UCC agreement  
15    was.

16    **Q.**     Doctor, isn't it true that the first time you even saw  
17    this was when Agent Visalli showed you this?

18    **A.**     Yes.

19    **Q.**     And isn't it true that the first time you ever had a copy  
20    of this document in your hands was after the defendant entered  
21    a guilty plea and it was provided to you by the government;  
22    isn't that true?

23    **A.**     That's true.

24    **Q.**     Now, Doctor, I don't know, did you have an opportunity to  
25    take a look at the sentencing memo that was filed by

1 Mr. Bennett on behalf of Jack Weichman?

2 **A.** I don't remember looking at such a document, no.

3 **Q.** Okay. Now, are you aware that there's a statement in  
4 there that says --

5 **THE COURT:** What page are you on, Ms. Berkowitz?

6 **MS. BERKOWITZ:** This is page 20 of defendant's  
7 sentencing pleading.

8 **Q.** "But contrary to the government's betrayal, he" -- you,  
9 Dr. Ashbach -- "was no helpless phobic incapable of handling  
10 his own money. For more than 30 years and running, he  
11 certainly has known enough to rely on Weichman and his staff to  
12 facilitate and manage regular, specific and targeted personal  
13 expenditures he wished to conceal" -- and that word is  
14 italicized -- "from his wife.

15 "This was also the reason Dr. Ashbach's bank and financial  
16 records were mailed to Weichman and Associates rather than his  
17 home in Illinois. Dr. Ashbach explicitly directed that his  
18 financial records be kept and maintained by Jack rather than  
19 his own home."

20 Is the reason why your financial records, both your  
21 business and any investments you had, were sent to Jack  
22 Weichman's office because you wanted to hide your investments  
23 from your wife?

24 **A.** The only thing I hid from my wife were the monies that I  
25 spent on Melanie. That was it.

1 Q. So if that's the case, then why were your financial  
2 records going to Jack Weichman?

3 A. Well, I had asked him to manage all of my finances,  
4 including all of my investments, 'cause I didn't feel that I  
5 had enough knowledge to do my own investing.

6 So I had asked for him to deal with that, and, of course,  
7 it was easier for me to have those things where they were  
8 accessible to him rather than at my house. They would have --  
9 my house would have been a disastrous place to put these  
10 papers.

11 Q. So the statement that's contained on page 20 of the  
12 defendant's sentencing memo, that's not true?

13 A. Well, it is not entirely true.

14 Q. A very small part. It has nothing to do with your  
15 investments, does it, Doctor, or any loans or anything like  
16 that? This has to do only with expenses associated with --

17 A. Melanie.

18 Q. -- Melanie.

19 Now, you mentioned on cross-examination that Jack told you  
20 that they would not get into Melanie, didn't he?

21 A. He did, yes.

22 Q. You're aware, though, Doctor, that both of those lawyers,  
23 including Mr. Gurland, they work at the direction of  
24 Jack Weichman; are you aware of that?

25 A. I am.



1 Q. And that any statement they make is made at his direction  
2 on his behalf; are you aware of that?

3 A. Yes.

4 Q. So, Doctor, do you believe that Jack Weichman was being  
5 honest with you when he told you: Not going to get into  
6 Melanie?

7 A. Well, I was pretty upset about it. It is embarrassing.

8 Q. That's not answering my question, Doctor.

9 A. All right. Say your question again.

10 Q. Do you believe that Jack Weichman was dishonest with you  
11 now about what he intended his lawyers to get into with you  
12 regarding Melanie?

13 A. I suppose what I really think is that Mr. Weichman's  
14 lawyers convinced Jack that Melanie should be brought up at  
15 this hearing.

16 Q. You believe his lawyers convinced Jack Weichman?

17 A. That's what I think, yes.

18 Q. Is that what you want to believe, Doctor?

19 A. That's what I want to believe, yes.

20 Q. Doctor, I want to just address one more thing with you,  
21 and this has to do with this Blackhawks tickets issue. Who do  
22 you believe you gave Blackhawks tickets to?

23 A. Do I really have to answer that?

24 Q. Absolutely, Doctor. You are under oath, so answer  
25 honestly.

1     **A.**     I believe that I gave Mr. Visalli a set of tickets.

2     **Q.**     Okay. And when do you think you gave him these tickets?

3     **A.**     It would have been over two years ago.

4     **Q.**     And do you know what game you would have given him tickets  
5     for?

6     **A.**     No, I do not.

7     **Q.**     And do you recall having a discussion with Jack at some  
8     time after you think you might have offered those tickets to  
9     Agent Visalli, saying, I offered Agent Visalli Blackhawks  
10    tickets?

11    **A.**     I did tell him that, yes.

12    **Q.**     You did tell him that. And was that brought up again  
13    recently by either Mr. Weichman or Mr. Gurland to you, Hey, do  
14    you remember the time you gave Blackhawks tickets to  
15    Agent Visalli?

16    **A.**     I remember that Mr. Gurland brought it back up to me, and  
17    that's another topic that they promised they weren't going to  
18    bring out in court.

19    **Q.**     So this was something that Mr. Gurland brought up to you,  
20    that you had given Blackhawks tickets to Agent Visalli?

21    **A.**     Yes.

22    **Q.**     And did he say that -- who was there at the game with  
23    Agent Visalli?

24    **A.**     No. I don't know who. I mean, I'm not even sure that I  
25    gave Mr. Visalli the tickets. I intended --

1 Q. Mr. Gurland told you that you --

2 THE COURT: Don't interrupt him. Let him finish.

3 THE WITNESS: I had intended to give him the tickets,  
4 but it is over two years ago, and I don't remember whether I  
5 actually remembered to give him the tickets or not.

6 BY MS. BERKOWITZ:

7 Q. But Mr. Gurland seemed to remember that you had given  
8 tickets to Agent Visalli, isn't that true?

9 A. That's because at that point I thought I had given him the  
10 tickets, but I have been corrected, so --

11 Q. Doctor, who brought up -- who brought that up to you, that  
12 you allegedly gave Blackhawks tickets to Agent Visalli? Who  
13 was that?

14 A. I think I mentioned it casually in conversation at some  
15 point, and they --

16 Q. Recently?

17 A. Within the last several months, yes.

18 Q. Okay. And you did have this discussion with  
19 Jack Weichman? You told him that you had offered tickets to  
20 Agent Visalli, is that correct?

21 A. Yes.

22 Q. Okay. And this conversation that you think you had  
23 recently regarding the Blackhawks tickets, did that include  
24 Attorney Gurland?

25 A. It did.

1 Q. Okay. So would it be fair to say that you've met with  
2 Attorney Gurland and Attorney Bennett and the defendant?

3 A. I met one time with Mr. Gurland prior to the court  
4 hearing, and that was when we had the discussion involving the  
5 Jalapenos -- transfer of that 25 percent of Jalapenos.  
6 Mr. Gurland and Jack and my lawyers were all present at  
7 Mr. Efron's office, and at that point, I think I mentioned the  
8 tickets.

9 Q. Okay. And did you have any other meetings with  
10 Mr. Gurland or Mr. Bennett?

11 A. I don't -- I -- I don't remember meeting with Mr. Bennett.  
12 I had only that one meeting with Mr. Gurland.

13 MS. BERKOWITZ: If I could have a moment, Your Honor.

14 THE COURT: (No response.)

15 BY MS. BERKOWITZ:

16 Q. How many times did you have meetings with Jack Weichman?

17 A. Several times a week.

18 Q. Several times a week, even after he was indicted, right?

19 A. For a long period of time because we were dealing with the  
20 joint venture involving American Renal Associates and NIN and  
21 my practice of medicine, so we were meeting frequently.

22 Q. And is it fair to say that just as frequently the issue  
23 about his upcoming sentencing and possibly going to jail, that  
24 came up, didn't it?

25 A. It basically did not, although there was innuendo

1 associated with it.

2 Q. Like what innuendo?

3 A. Well, there were times when he would be out to dinner with  
4 Melanie and me, and he would be making gestures like this  
5 (indicating), and I wasn't quite sure what the gestures  
6 intended, but I suspected that it had something to do with the  
7 upcoming sentencing hearing. And there were times when Jack  
8 had told me that everything that happens today depended upon my  
9 testimony and what I said.

10 Q. He told you that?

11 A. He told me that.

12 Q. And did he tell you that before or after he said, David,  
13 could you write that letter about my mother?

14 A. The letter was written within the last couple weeks. Most  
15 of this is long before that.

16 Q. And again, those last two lines of that letter --

17 A. I did write those last two lines.

18 Q. You wrote them, but did someone dictate those to you?

19 A. No, they did not.

20 MS. BERKOWITZ: I have no further questions.

21 THE COURT: Do you have anything else, Mr. Gurland?

22 RECROSS-EXAMINATION

23 BY MR. GURLAND:

24 Q. Mr. Ashbach, you and I met once with your counsel,  
25 correct?

1 A. Correct.

2 Q. In preparation for your testimony or during the course of  
3 this investigation, how many times have you met with the  
4 government or spoken with Diane Berkowitz or government agents?

5 A. Quite a few times.

6 Q. Dozens?

7 A. Certainly more than 10 times, but most of it a year ago,  
8 two years ago. I've met with the prosecution maybe -- this  
9 year, maybe twice.

10 Q. You testified last Thursday that the government told you  
11 that if you did not testify in line with your grand jury  
12 testimony you would not get restitution. Do you recall that  
13 testimony?

14 A. I do.

15 Q. And you recently had conversations with Diane Berkowitz  
16 regarding the settlement agreement that you entered into with  
17 Jack Weichman regarding restitution, correct?

18 A. I think -- I don't remember whether the conversation  
19 involving that restitution agreement was strictly here in court  
20 with her or whether we had met before. I don't remember.

21 Q. But you did discuss the restitution agreement with  
22 Diane Berkowitz, correct, before you entered into it?

23 A. No, not -- we -- Ms. Berkowitz was aware that the  
24 conversation was going on, but I don't specifically remember  
25 discussing any aspect of the agreement with her.

1 Q. Do you recall telling Jack Weichman that Diane Berkowitz  
2 had discouraged you from entering into the agreement?

3 A. But not any specifics, just that she felt that I would do  
4 better if the government were allowed to help me with the  
5 restitution rather than my lawyers.

6 Q. And in connection with the agreement, you were, in fact,  
7 represented by lawyers, two lawyers?

8 A. Yes, three.

9 Q. And you entered into the agreement on their advice,  
10 correct?

11 A. Yes.

12 Q. You testified today that Jack Weichman was responsible for  
13 your investments. It is correct, is it not, that you follow  
14 the stock market?

15 A. That I follow the stock market?

16 Q. Yes.

17 A. Not generally.

18 Q. Are you denying that you frequently would call  
19 Jack Weichman and tell him about an investment opportunity or a  
20 stock or something that you had read about or seen on TV that  
21 you were interested in, just to discuss the market?

22 A. I don't think I've ever done that.

23 Q. I want to direct your attention to what has been marked  
24 for identification as Defendant's Exhibit 26.

25 I'm going to represent to you it is a copy of the check

1 register for the Fifth Third account. You indicated that the  
2 checks that were written on this account were written by  
3 someone at Weichman and Associates?

4 A. They -- Ms. Einterz would write the checks, and I would  
5 sign them.

6 Q. Were there particular checks that you wanted to have your  
7 signature on?

8 A. I thought basically the checks from that account were  
9 usually signed by me.

10 Q. Okay. Were there ever any entries that you made into the  
11 check register after you signed checks?

12 A. I don't think I've ever seen the check register.

13 Q. Let me direct you to page 2 in Defendant's Exhibit 26.  
14 You see the entries for Check Nos. 454 and 455?

15 A. Yes.

16 Q. Is that your handwriting in the description of the  
17 transaction?

18 A. That looks like my handwriting, yes.

19 Q. What did you write in the description of the transaction  
20 with regard to 454?

21 A. I beg your pardon?

22 Q. What did you write for Check No. 454?

23 A. That says Mary Kay.

24 Q. That was your girlfriend, right?

25 A. Yes.



1 Q. And what did you write for 455?

2 A. Same.

3 Q. You regularly came into Weichman and Associates on a  
4 monthly basis to write checks to Melanie and to Mary Kay,  
5 correct?

6 A. Yes.

7 Q. You didn't need someone to do that for you, right?

8 A. No.

9 Q. You also would take money from this account for your home  
10 finances if your account at home was overdrawn, correct?

11 A. (No response.)

12 Q. I'm referring specific to the entry Check No. 477 to  
13 Citizens Financial. That was your home mortgage?

14 A. I don't remember Citizens Financial.

15 Q. Do you remember sometimes you would be overdrawn or you  
16 would need more money, and you would write checks out of this  
17 account or take checks out of this account for your personal  
18 finances?

19 A. I probably did, yes.

20 Q. Do you recall the discussion about the loan in 2002 that  
21 we had on Thursday, the Centier loan?

22 A. Yes.

23 Q. When that loan was taken out, the monies from that loan  
24 were, in fact, deposited into your account, were they not?

25 \\\

1           **MS. BERKOWITZ:** Which account, Your Honor? If  
2 counsel could identify.

3           **MR. GURLAND:** The Fifth Third account. I'm referring  
4 to the check register, Defendant's Exhibit 26.

5           **THE WITNESS:** I have no idea.

6 **BY MR. GURLAND:**

7 **Q.** So on June 10<sup>th</sup> of 2002, do you know what the hundred  
8 thousand dollar deposit into your account -- do you know where  
9 that came from?

10 **A.** No.

11 **Q.** And with respect to the additional deposits on June 7<sup>th</sup>  
12 and June 26<sup>th</sup> of \$75,000 each, do you know where --

13 **A.** I have no recollection.

14 **Q.** -- those monies came from?

15 **A.** No.

16 **Q.** You don't know where the \$250,000 that was put into your  
17 checking account came from?

18 **A.** No.

19 **Q.** But this was an account that you routinely used month  
20 after month to write checks to Mary Kay and to Melanie,  
21 correct?

22 **A.** Yes.

23 **Q.** Is there a reason -- and I assume that with respect --  
24 other than the -- these personal checks --

25 **A.** Could I point out something to you? The very top line of

1 the page you have open, there's a check for a hundred thousand  
2 dollars written to Jack.

3 Q. Right. And that's clearly indicated in the check  
4 register, correct, that's before you now, correct?

5 A. Yes.

6 Q. Okay. And below that is your handwriting. You wrote the  
7 words "Mary Kay" and the word "Melanie."

8 A. No, but the Jack Weichman check is not in my handwriting.

9 Q. I understand that, but you have no trouble reading the  
10 words "Jack Weichman." In fact, right above Mary Kay, where  
11 you signed, it says, "Jack Weichman \$50,000," correct?

12 A. I don't see a check to Mary Kay for \$50,000.

13 THE COURT: You need to answer the question, Doctor.

14 THE WITNESS: I'm not sure I -- say the question  
15 again.

16 BY MR. GURLAND:

17 Q. Let me direct your attention to Defendant's Exhibit 26,  
18 page 11 of the check register, the 2002 check register for  
19 Fifth Third Bank. Direct your attention to Check No. 664 and  
20 the description of the words "Mary Kay" in your handwriting.

21 A. That's in my handwriting, yes.

22 Q. Right above that, Check No. 660, in Linda's handwriting,  
23 it says "Jack Weichman," does it not?

24 A. It does.

25 Q. And also write below your handwriting, Mary Kay, it says

1 "Melanie," correct?

2 **A.** Correct.

3 **Q.** And you have no trouble reading the words "Jack Weichman"  
4 written in Linda's handwriting, correct?

5 **A.** Correct.

6 **MR. GURLAND:** I have nothing further, Your Honor.

7 **THE COURT:** Just one more round.

8 **MS. BERKOWITZ:** Your Honor, may I just have a moment  
9 because I haven't seen this document before. We need to add up  
10 something on here. It will take five minutes, if I can have  
11 the Court's indulgence on that. These are records that were  
12 not available to the government.

13 **MR. GURLAND:** It is just numbers. I don't know that  
14 we need more testimony to do a --

15 **MS. BERKOWITZ:** I think it will be kind of relevant,  
16 Your Honor.

17 **THE COURT:** Okay. Call me when you are ready.

18 **MS. BERKOWITZ:** Thank you, Your Honor.

19 (A recess was had at 10:49 a.m. )

20 (The following proceedings were held in open court  
21 beginning at 10:57 a.m., reported as follows:)

22 **DEPUTY CLERK:** All rise.

23 **THE COURT:** You can be seated. This is going to be  
24 the last round of questioning of this witness.

25 Proceed.

**FURTHER REDIRECT EXAMINATION****BY MS. BERKOWITZ:**

**Q.** Dr. Ashbach, I'm showing you part of what's been marked as Defense Exhibit 26. Just to be clear, the writing that you are seeing here at the top where it says Jack Weichman, is that your writing?

**A.** No.

**Q.** Is that Linda Einterz's writing?

**A.** I'm not sure, but it is not my writing.

**Q.** Okay. And that's \$100,000. You didn't write that check?

**A.** No.

**Q.** Doctor, are you aware that on -- let's see, so June 10<sup>th</sup> there's a \$100,000 check. There's another check to Jack Weichman on June 7<sup>th</sup> for \$85,000. Is that your writing?

**A.** No.

**Q.** There's another check to Jack Weichman on June 26<sup>th</sup> for \$50,000. Is that your writing?

**A.** No.

**THE COURT:** What year are we talking about here?

**MS. BERKOWITZ:** This is 2002, Your Honor. And in 2002 the defendant got the line of credit at Centier Bank supposedly for the Broadmoor Country Club investment.

**THE COURT:** Yeah.

**BY MS. BERKOWITZ:**

**Q.** \$50,000 on the 26<sup>th</sup>. And then on July 10<sup>th</sup>, there's a

1 \$25,000 check. Any of those your handwriting?

2 A. No.

3 Q. Doctor, are you aware that \$260,000 was written on --  
4 checks were written on this Fifth Third account payable to  
5 Jack Weichman?

6 A. No, I was not aware.

7 Q. Now, counsel was asking you -- I know you are a little  
8 embarrassed about this, but he was asking you about some of  
9 your lady friends. And he was asking you: Well, isn't it true  
10 that there are expenses in here that you handwrite -- that you  
11 believe that's your writing, Mary Kay?

12 A. Yes.

13 Q. Are you aware, Doctor, that on this page for 2002, there's  
14 a total of \$2,000 that you wrote checks for for your lady  
15 friends, one on July 3<sup>rd</sup> for Mary Kay for \$500, another one  
16 on July 3<sup>rd</sup> for Melanie for \$1500?

17 A. Correct.

18 Q. Doctor, why would you handwrite in any payments that  
19 related to your lady friends?

20 A. I think that's because Linda wanted me to do it that way.

21 Q. She wanted you to do it that way? Why?

22 A. She felt more comfortable if I was writing those checks  
23 myself.

24 Q. One more thing, Doctor.

25 Still on this page from Defense Exhibit 26, right here,

1 Centier Bank, there's a check payment to Centier Bank. Is that  
2 your writing?

3 A. No.

4 Q. And here is another one. On 6/7, there's a deposit,  
5 Centier loan. Is that your writing?

6 A. No.

7 Q. \$75,000, not yours, not your writing?

8 A. Not mine.

9 Q. And again, were you aware, Doctor, that in June of 2002,  
10 Jack Weichman went to Centier Bank and claimed you were going  
11 to be investing in Broadmoor Country Club and got a \$250,000  
12 line of credit in your name?

13 A. I don't remember anything like that.

14 Q. You didn't know about that in 2002, did you?

15 A. I don't believe so.

16 Q. Doctor, didn't you have other -- did you have Centier  
17 loans from your medical practice?

18 A. I believe we did, yes.

19 Q. So if you saw Centier on there, would you have assumed  
20 that it was for the only thing that you knew about at that  
21 time, which would be your business?

22 A. Yes.

23 MS. BERKOWITZ: Nothing further, Your Honor.

24 THE COURT: You have anything else?

25 MR. GURLAND: One question, Your Honor.

**FURTHER RECROSS-EXAMINATION**

**BY MR. GURLAND:**

**Q.** Mr. Ashbach, in addition to the payments for your friends, you also paid for their mortgages out of this account, correct?

**A.** Yes.

**MR. GURLAND:** Nothing further, Your Honor.

**THE COURT:** Sir, you may step down.

Who is your next witness?

**MS. BERKOWITZ:** Jamie Dow.

**THE COURT:** Before we call her, can we just -- I don't understand what I've just heard, okay, and how it is germane to what I'm trying to decide here. So can you all just tell me that while it is fresh in my mind?

You want to go first, Ms. Berkowitz?

**MS. BERKOWITZ:** Sure. Your Honor, this check register for Fifth Third -- well, first of all, it is records from 2002, which the government did not have access to. So these are not records that we've ever seen before. This bank account, the Fifth Third Bank account --

**THE COURT:** I thought you raided his place and took all the paper.

**MS. BERKOWITZ:** We didn't take out every single thing, Your Honor. We didn't.

**THE COURT:** Okay. But I guess what I'm trying to understand is what is the connection between the Centier loan



1 and this Fifth Third Bank account?

2 **MS. BERKOWITZ:** And so as it is charged in the  
3 Indictment, Your Honor -- and we didn't understand there to be  
4 a loss. So this information is new to us.

5 So what it appears to be, in 2002, as we identify in the  
6 Indictment, all we knew at that time was that the defendant had  
7 taken out a line of credit in the name of Dr. Ashbach in 2002,  
8 in June of 2002, for \$250,000 ostensibly for the victim to  
9 invest in Broadmoor.

10 We didn't know what happened, but as we can see from here,  
11 from this check register, the defendant is, in fact, stealing  
12 that money because he didn't have -- the money didn't go to  
13 Broadmoor. The money wasn't for this victim --

14 **THE COURT:** Well, how do we know it went into here?

15 **MS. BERKOWITZ:** Because we see the deposits,  
16 Your Honor. There's a deposit that says "Centier loan."

17 **THE COURT:** What page is that on?

18 **MS. BERKOWITZ:** That's on page 11, I believe. There  
19 are two \$75,000 deposits, Your Honor. One on June 7<sup>th</sup>, one  
20 on June 26<sup>th</sup>. That's \$150,000 alone. This is the same time  
21 period as when Jack first approaches Centier Bank and gets that  
22 line of credit in the name of David Ashbach.

23 **THE COURT:** But what is this Fifth Third account? Is  
24 this his sort of working account of Dr. Ashbach?

25 **MS. BERKOWITZ:** No. This is Dr. Ashbach's personal

1 account, and I guess we could have Dr. Ashbach explain this to  
2 you. This was his -- this was used for his personal expenses.

3 **THE COURT:** But it was managed by the defendant,  
4 apparently?

5 **MS. BERKOWITZ:** It was managed by the defendant and  
6 defendant's office.

7 **THE COURT:** Do you want to respond to any of this? I  
8 just want to make sure I'm understanding how this is all  
9 germane.

10 **MR. GURLAND:** Your Honor, we just put this in  
11 rebuttal to show that there's additional evidence that  
12 Dr. Ashbach was aware of loans and aware of his finances. In  
13 response, really only -- the only thing that's in dispute is  
14 the --

15 **THE COURT:** Is the vulnerable victim?

16 **MR. GURLAND:** -- vulnerable victim.

17 **THE COURT:** Yeah, okay.

18 **MR. GURLAND:** With regard to Jamie Dow, we would  
19 object to having any more testimony. Jamie Dow was never  
20 disclosed, never disclosed by the government. It didn't come  
21 up until Thursday.

22 Supposedly, they are calling Jamie Dow in rebuttal. I'm  
23 not really sure in rebuttal to what, given that we haven't put  
24 on anything. With the exception of this one exhibit, there's  
25 no exhibits that -- of the 25 exhibits we have they haven't

1 seen. And there really is -- other than the vulnerable victim  
2 issue, Your Honor, the only thing that's on the table is the  
3 \$850,000 loan. We've heard from Dr. Ashbach. Your Honor has  
4 all the information you need to decide that issue of fact, I  
5 believe, you know, as to whether or not they have proven more  
6 than a preponderance of evidence that he possibly did or didn't  
7 know about it.

8 That's the only issue. We can agree -- I've reached out  
9 to Agent Visalli and the government, I haven't heard back.  
10 Because once you decide that issue, the tax loss issue is just  
11 a simple computation of 28 percent of the larger number, the  
12 number minus \$850,000. So, again, it is something else we can  
13 stipulate to.

14 And I'm not really sure what we're spending time on, what  
15 the purpose of Jamie Dow is, and I do believe the Court has  
16 some discretion at some point to cut this off.

17 We heard from, yesterday, from Mr. Lazzaro. I had thought  
18 the point of that was we had asked and had not been told,  
19 despite our questions, how the intended bankruptcy loss was  
20 computed. We assumed since Mr. Lazzaro was testifying and they  
21 provided all this last minute evidence about Mr. Lazzaro that  
22 they wanted to include his contingent claim. We didn't learn  
23 until after he testified and Jennifer Prokop testified that  
24 they are not including it, and we're able to stipulate to the  
25 intended loss, once they told us what was included in it. So

1 all that was unnecessary.

2           **THE COURT:** Well, they are allowed to present  
3 witnesses that they think characterize your client in a bad  
4 light in the same way that you are allowed to call character  
5 witnesses that portray him in a positive light, and that's how  
6 I take Dr. Lazzaro's testimony. You presented me a stack of  
7 letters that have been, you know, about how terrific your  
8 client is. That's your prerogative. They have the same  
9 prerogative.

10           **MR. GURLAND:** I understand, but a lot of this is  
11 purportedly to address the two open issues, and I don't  
12 understand how Jamie Dow addresses that issue.

13           **THE COURT:** I'm going to ask Ms. Berkowitz here in a  
14 minute. There's a very discrete thing we are trying to decide  
15 here to arrive at the appropriate loss amount under the  
16 guidelines that's what we're trying to do here. And so what is  
17 this next witness -- how is that going to advance that ball?

18           **MS. BERKOWITZ:** Well, the other factor is,  
19 Your Honor, 3553 issues as well, which have been raised by the  
20 defendant.

21           But Jamie Dow -- there's a letter from Linda Einterz that  
22 was produced by defendants and was referenced more than once  
23 during the sentencing hearing, and the letter from  
24 Linda Einterz seems to suggest that she made known to the  
25 government that she didn't believe Jack Weichman embezzled.

1           What we're showing, Your Honor, is that Linda Einterz has  
2 not been an honest broker with the government, that she has --  
3 that's why the testimony from Ms. Dow will be important, that  
4 she had been aware that there were concerns about the handling  
5 of David Ashbach's account, that she laughed about it, that  
6 she, you know, was aware --

7           **THE COURT:** Who is Jamie Dow?

8           **MS. BERKOWITZ:** Jamie Dow is someone who was handling  
9 that spreadsheet prior to 2011. That's the spreadsheet where  
10 all the money that Jack Weichman was supposedly taking out of  
11 David Ashbach's account, has been paying back into  
12 David Ashbach's accounts. That's all reflected in that big  
13 spreadsheet, and that was kept at the direction of  
14 Jack Weichman by first Ms. Dow and later by Ms. Einterz.

15           **THE COURT:** How is that going to help me answer the  
16 inquire about whether the \$850,000 should be part of the loss  
17 figure?

18           **MS. BERKOWITZ:** Well, it goes to 3553 issues,  
19 Your Honor. It also goes to the credibility --

20           **THE COURT:** I'm going to allow you to just proffer  
21 that information when I give you your right of allocution. I  
22 just don't see how it is germane to the fact-finding here about  
23 arriving at the appropriate loss figure for purposes of the  
24 guidelines, which is what we're doing here. So do you have any  
25 other witnesses?

1           **MS. BERKOWITZ:** I do not -- I do, Your Honor. I have  
2 the agents. I have Revenue Agent Hatagan, and then I'll have  
3 Agent Brian Visalli.

4           **MR. GURLAND:** Again, Your Honor, I think the only  
5 open issue is, once you decide --

6           **THE COURT:** I understand.

7           **MR. GURLAND:** -- is the tax loss, and I think that's  
8 what they are left to testify about here.

9           **THE COURT:** I'm presuming the agents are going to  
10 help me with that inquiry.

11           **MR. GURLAND:** What I'm saying is, we can stipulate to  
12 it because the tax loss is either what is indicated in i think  
13 Visalli Exhibit 7 or --

14           **THE COURT:** Well, it is going to be helpful to me.  
15 So go ahead. Call them.

16           **MS. BERKOWITZ:** Government calls Agent Hatagan to the  
17 stand.

18           **THE COURT:** Good morning, Agent Hatagan. If you  
19 would, raise your right hand to take an oath.

20           **THE WITNESS:** Good morning, Your Honor.  
21 (The oath was administered.)

22           **THE WITNESS:** I will.  
23  
24  
25

GERARD HATAGAN, GOVERNMENT WITNESS, SWORN

**DIRECT EXAMINATION**

**BY MS. BERKOWITZ:**

**Q.** Agent Hatagan, can you please state your full name for the record?

**A.** Gerard Hatagan, H-A-T-A-G-A-N.

**Q.** Agent Hatagan, how are you employed?

**A.** I'm employed by the Internal Revenue Service.

**Q.** What are your duties as an employee with the Internal Revenue Service?

**A.** I'm a special enforcement program revenue agent. I assist the criminal investigation division of the Internal Revenue Service.

**Q.** And for purposes of this sentencing hearing today, were you asked to analyze some records, records from 2008 through 2012, regarding Ari Weichman, W-2 forms issued to Ari Weichman by Weichman and Associates?

**A.** Yes.

**Q.** Let me show you what's been marked as Hatagan No. 1. Is this your summary of those records?

**A.** It is.

**Q.** Okay. And what exactly were you looking at to summarize this information?

**A.** The schedules based on the W-2 forms that were issued to Ari Weichman by Weichman and Associates in the calendar years

1 2008 through 2011.

2 Q. Okay. There's nothing for 2012, I take it?

3 A. There were not.

4 Q. All right. So taking a look at your entries here for 2008  
5 through 2011, you're identifying, then, that Weichman and  
6 Associates, there is actual W-2 income that was reported for  
7 Ari Weichman?

8 A. Correct.

9 Q. Was this reported just on a W-2?

10 A. Yes.

11 Q. Did you have an opportunity to go through the schedules of  
12 Weichman and Associates for those same time periods?

13 A. I did.

14 Q. And did you see any regular journal entries in those  
15 schedules -- these are the business schedules for Weichman and  
16 Associates. Did you see any regular journal entries reflecting  
17 check payments, regular employee compensation payments made to  
18 Ari Weichman from MMDS during this time period?

19 A. I did not.

20 Q. So all you're seeing, Agent Hatagan, then, are W-2s, and  
21 that's what you are basing this summary on, is that correct?

22 A. This summarizes the information that was contained on the  
23 W-2s.

24 Q. Agent Hatagan, is that unusual if there's a W-2 issued for  
25 an employee and the internal business records of the business



1 don't seem to indicate that there's ever a regular payroll  
2 check cut to an individual, is that unusual?

3 A. It is out of the ordinary.

4 Q. Let's take a look at Hatagan No. 2. Is this a summary  
5 that you prepared regarding the records of MMDS?

6 A. It is.

7 Q. And again, this is to determine whatever wage income MMDS  
8 identified for Ari Weichman?

9 A. Yes.

10 Q. And it's for the time period of 2008 through 2012?

11 A. Correct.

12 Q. For MMDS, during this time period 2008 to 2012, did you  
13 have an opportunity to review the internal books and records,  
14 the journal entries for MMDS for 2008 through 2012?

15 A. I did.

16 Q. And did you see any journal entries in those records  
17 reflecting payroll payments to Ari Weichman during this time  
18 period?

19 A. I saw journal entries, but I didn't see anything that  
20 would indicate there were periodic checks cut for payroll.

21 Q. To Ari Weichman?

22 A. Correct.

23 Q. So you're getting the information regarding wage income to  
24 Ari strictly from W-2s, is that right?

25 A. Correct.

1 Q. Again, is that unusual?

2 A. Yes.

3 Q. Taking a look at Hatagan 1 and 2, what is the total amount  
4 of wage income that you have identified as going to  
5 Ari Weichman from the period of 2008 through 2012?

6 A. It amounted to \$790,000, of which 275,000 was from  
7 Weichman and Associates, and 515,000 was paid by MMDS.

8 Q. How was that \$790,000 in compensation paid to Ari Weichman  
9 accounted for in the books and records of Weichman and  
10 Associates?

11 A. They had set up a ledger account for each of the companies  
12 in the name of Ari Weichman, and it was set up as a receivable,  
13 which means they set it up as if Ari Weichman owed money to the  
14 company. And throughout the course of the calendar year,  
15 various items were posted to that receivable account that was  
16 set up for Ari Weichman. And then at the conclusion of the  
17 calendar year, an adjustment that was equal to the net  
18 compensation shown on the W-2s that were issued to  
19 Ari Weichman, an adjustment in that amount was made to decrease  
20 that loan that the company had made to Ari Weichman.

21 Q. Is that complicated? It sounds like it.

22 A. It's definitely out of the ordinary.

23 Q. And would it be typical for a business to make a loan to  
24 someone who is not employed by that business?

25 A. Yes.

1 Q. And would they put it on the books and records as a  
2 loan -- was this identified in the books and records of  
3 Weichman and Associates, these loans to Ari? Were they  
4 identified as loans to shareholder?

5 A. No, they were just identified as other loans.

6 Q. Okay.

7 A. Because I do not believe that Ari was a shareholder in  
8 either of these companies.

9 Q. I'm showing you what's marked as Hatagan No. 3. Is this a  
10 summary that you did of how you broke down those ledgers?

11 A. Yes.

12 Q. From 2008 to 2011, for Weichman and Associates?

13 A. Yes.

14 Q. So can you kind of walk us through at least one of these?  
15 There's a note payable -- this is 2008, and it says that  
16 there's a 213 note payable, Ari.

17 A. Yes.

18 Q. And the date of that is 6/30/08?

19 A. Correct.

20 Q. What is this reference, P89.4?

21 A. That makes reference to a payroll journal that was  
22 maintained for Weichman and Associates, and we had not seen any  
23 of those payroll journals. So my analysis is based strictly  
24 off of the information that I saw contained within the general  
25 ledger of Weichman and Associates.

1 Q. Okay. And that amount is identified as \$19,737?

2 A. Yes, that would have been the net compensation received by  
3 Ari Weichman for the calendar year 2008.

4 Q. Just from Weichman and Associates?

5 A. Correct.

6 Q. Okay. In 2009 through 2011, you do that same kind of  
7 analysis per calendar year, what is booked as a payroll journal  
8 entry, is that right?

9 A. Correct.

10 Q. Now, it doesn't start off as a payroll journal entry, just  
11 to be clear, is that right, in the books and records of  
12 Weichman and Associates?

13 A. That is correct. Throughout the course of the year, with  
14 the exception of the very first year, when the entry was made  
15 on June 30<sup>th</sup> at mid year, but if you take a look, the date  
16 that's down for 2009, '10, and '11, this journal entry is made  
17 at the end of the calendar year.

18 So the net compensation is used to reduce the amount of  
19 money that's purported to be owed by Ari Weichman to Weichman  
20 and Associates at the end of each of these calendar years.

21 Q. To be clear, Agent Hatagan, this means that it's money  
22 that's coming out of Weichman and Associates, is that right?

23 A. That is correct.

24 Q. And would this also be money, then, that could be expensed  
25 by Weichman and Associates as a business expense?

1     **A.**     The gross compensation received by Ari Weichman was, in  
2     fact, taken as a business expense by Weichman and Associates  
3     and MMDS.

4     **Q.**     So this business expense, then, would that necessarily  
5     then reduce the amount of excess income that Weichman and  
6     Associates would have in any given year, is that right, from  
7     2008 to 2011?

8     **A.**     That is correct.

9     **Q.**     Taking a look at what's been marked as Hatagan No. 4, is  
10    this your summary of the journal entries as it relates to MMDS?

11    **A.**     Yes.

12    **Q.**     And same concept that's involved here?

13    **A.**     Yes.

14    **Q.**     So it starts out as a loan to Ari Weichman; yes?

15    **A.**     Yes.

16    **Q.**     And then gets put on the books and records of MMDS at some  
17    later point as a payroll journal entry?

18    **A.**     Yes, that's the entry made to reduce the outstanding  
19    amount owed by Ari Weichman to MMDS at the end of each year.

20    **Q.**     Now, you said you have looked at the books and records,  
21    the journal entries for MMDS and Weichman and Associates, is  
22    that correct, for these years 2008 through 2012?

23    **A.**     Yes.

24    **Q.**     These were produced to the government by the defendant, is  
25    that correct?

1 A. Correct.

2 Q. And do those journal entries reflect that there are actual  
3 payments to other employees? Do you see those periodically  
4 throughout the year, payroll expenses or payroll being made to  
5 individual employees of Weichman and Associates or MMDS?

6 A. Yes, that's where I had made note of the routine periodic  
7 payments either made biweekly, monthly, weekly, and they were  
8 broken out into various categories. They were either  
9 categorized as managerial wage expense, administrative wage  
10 expense.

11 So they were broken down into a specific category of the  
12 type of wage that was paid and which were accompanied also by,  
13 you would see, you know, the biweekly, weekly, monthly entries  
14 made for that compensation that was being paid to other  
15 employees of Weichman and Associates.

16 Q. But not for Ari, is that correct?

17 A. Correct.

18 Q. I'm showing you what's been marked as Hatagan No. 5. Can  
19 you tell us what this is, what this summarizes?

20 A. These are the items that were posted to this account that  
21 was opened up for Ari Weichman in the calendar year 2008. The  
22 date is the date that was contained in the ledger. The  
23 reference is the reference to the check number that was issued  
24 by Weichman and Associates, and the description was the  
25 description that was originally put into the ledger, and the

1 amount was the actual payment.

2 So, in summary, for the year 2008, there was \$19,736.90  
3 posted to the -- this was actually set up as a note payable to  
4 Ari. In this one year, and I'm going to keep it very short  
5 because it could get very confusing quickly, but this one year  
6 what they did is the net compensation that was owed to  
7 Ari Weichman was put on the books as a payable to Ari Weichman.  
8 So then these payments that were made by Weichman and  
9 Associates on behalf of Ari Weichman were posted against that  
10 payable.

11 So the way it was set up, based on the W-2 that was issued  
12 to Ari in the year 2008, the net amount of wages that would  
13 have been due to him by Weichman and Associates was \$19,736.90.  
14 In lieu of actually receiving that in wage payments, Weichman  
15 and Associates paid \$19,736.90 on behalf of Ari Weichman  
16 towards his American Express account.

17 Q. This is reflecting, then, that there is some expense  
18 associated with Weichman and Associates from 2008 relating to  
19 Ari, is that right?

20 A. Correct.

21 Q. And that it is a legitimate business expense, right?

22 A. Correct.

23 Q. That ultimately they characterize as wage income to Ari?

24 A. Correct.

25 Q. Can you tell us what we're looking at in Hatagan No. 6?

1 What does this summarize?

2 A. That would represent the amounts that were posted to the  
3 note receivable Ari account that was opened up for Weichman and  
4 Associates for the calendar year 2009.

5 Q. So there's a switch, is there, Agent Hatagan --

6 A. Yes.

7 Q. -- from notes payable now to notes receivable?

8 A. Yes.

9 Q. What does that mean; can you explain that, please?

10 A. The note payable ceases to exist at the end of 2008, and  
11 then in the year 2009, they just start with a receivable.

12 Q. What does that mean, "a receivable"; what is that?

13 A. Yeah, at this point in time, there's no balance due to  
14 Ari Weichman by Weichman and Associates. So let's say as early  
15 as June 7, 2009, receivable, meaning monies owed by  
16 Ari Weichman to Weichman and Associates, so as of the first  
17 item that gets posted to the account on January 7, 2009,  
18 Ari Weichman would owe Weichman and Associates \$10,116.75, and  
19 then it just continues to accumulate as you go throughout the  
20 year.

21 Q. In your preparation of the summary, did you go through the  
22 American Express records?

23 A. I did. I looked at the actual statements and the  
24 underlying charges that described the monthly activity for the  
25 accounts.



1 Q. And you also looked through the journal entries, is that  
2 right, for Weichman and Associates?

3 A. I did.

4 Q. Agent Hatagan, anything you can think of that would be  
5 purchased at Victoria's Secret that would have some business  
6 application at Weichman and Associates?

7 A. I would not think that that would be an ordinary and  
8 necessary business expense of Weichman and Associates.

9 Q. These are all payments, then, that are identified on the  
10 books and records of Weichman and Associates as money due from  
11 Ari Weichman?

12 A. Correct.

13 Q. During this time period in 2009, did you see anything in  
14 the books and records that showed Ari Weichman was, in fact,  
15 working at Weichman and Associates?

16 A. Other than these year-end journal entries that were made,  
17 no.

18 Q. Well, other than the W-2 that got issued in 2009, right?

19 A. Correct.

20 Q. I'm showing you what's been marked as Hatagan No. 7. Can  
21 you explain what this is?

22 A. This is more of the annual activity that got booked to the  
23 loan that -- the loan receivable from Ari Weichman payable to  
24 Weichman and Associates. I shouldn't use the terms  
25 interchangeably, but it was the monies that were due from

1 Ari Weichman to Weichman and Associates. So the first payment  
2 made and booked to this account would have been as early as  
3 January 13, 2010.

4 Q. And these are items that then are turned into a W-2 for  
5 Ari Weichman?

6 A. A portion of. So throughout the course of the year, it  
7 was the case that more monies were advanced to Ari Weichman  
8 than were actually designated as compensation. So if you go  
9 down to the bottom of this schedule, you'll see the total  
10 amount that was expended on behalf of Ari Weichman of which a  
11 portion of -- so in this instance, throughout the calendar year  
12 2010, \$169,468.02 was expended by Weichman and Associates on  
13 behalf of Ari Weichman, or for the benefit of Ari Weichman, of  
14 which a portion of that money then gets re-categorized as  
15 compensation to Ari.

16 Q. What about the rest of the money; what happens with that?

17 A. It remains in this loan receivable account. So at the end  
18 of the period that we see W-2s going to Ari Weichman from  
19 Weichman and Associates, there remains a balance in this loan  
20 account.

21 So in this instance, we know the last W-2 that went to  
22 Ari Weichman was for the calendar year 2012. And after  
23 December 31, 2012, there was an amount due from Ari Weichman to  
24 Weichman and Associates that was approximately \$270,000.

25 Q. That was still on the books and records?

1 A. Yes.

2 Q. What about loans to Jack Weichman?

3 A. The loan activity for Jack Weichman was kept separate from  
4 the loan activity for Ari Weichman.

5 Q. And looking at Hatagan No. 8. Again, this is your summary  
6 of the general ledger, notes receivable for 2011?

7 A. Correct.

8 Q. And these are all expenses that are identified as some  
9 kind of loan to Ari Weichman?

10 A. These were monies that were expended throughout the  
11 calendar year for the benefit of Ari Weichman. They were  
12 booked to this loan account that was payable -- that Ari owed  
13 to Weichman and Associates, of which a portion was  
14 re-categorized as compensation at the end of the year.

15 Q. And that total you identify as \$186,036.37?

16 A. Correct.

17 Q. Let me show you what's been marked as Hatagan No. 16. Can  
18 you tell us what this is?

19 A. This is just a summarization of the schedule that you had  
20 previously showed me. This pretty much just puts them all on  
21 one page, and it shows the various items that were posted to  
22 this loan account that was set up for Ari Weichman.

23 So if you take a look, one of the categories -- and these  
24 descriptions that you see on this page are the exact same  
25 descriptions that were entered in the general ledger of

1 Weichman and Associates. So this will tell you that some of  
2 the items that were booked to this loan account opened up for  
3 Ari Weichman, one of the categories was payments made on  
4 American Express cards. Another category, and I'm not going to  
5 go through the entire page, but another category would have  
6 been JW cashier's check. We also have payments to the Hammond  
7 Port Authority. We had boat loan payments. We had payments to  
8 an individual by the name of Lisa Weichman, and there were some  
9 payments to Ari Weichman as well.

10 Q. Let's take a look at the JW cashier's checks. So in  
11 2011 -- and this is for the notes receivable for Weichman and  
12 Associates, right?

13 A. Correct.

14 Q. So there's a \$75,000 cashier's check for Jack Weichman?

15 A. Yes.

16 Q. But that gets booked -- it ultimately is turned into a  
17 W-2, part of the compensation for Ari Weichman; is that what  
18 you are telling us?

19 A. Correct.

20 Q. Showing you what's been marked as Hatagan No. 9. Can you  
21 explain this for us, please? What is this summarizing?

22 A. Yes, this is the payments that were booked to what started  
23 as a note payable to Ari but by the end of the year became a  
24 note receivable due from Ari. These are the types of items  
25 that were posted against that account. There was an \$80,000

1 loan to JW. There were some payments made to Ari, and then  
2 there was another journal entry to do some reclassification.

3 So, ultimately, when you get down to the end of the year,  
4 there was a net balance due from Ari Weichman to MMDS in the  
5 amount of \$55,265.

6 **MS. BERKOWITZ:** Your Honor, I just noticed defendant  
7 walked out. Do we need to --

8 **MR. GURLAND:** He needed a break. That's fine,  
9 Your Honor. We can continue.

10 **MS. BERKOWITZ:** Continue, Your Honor?

11 **THE COURT:** Sure. Actually, no. As I sit here and  
12 think about it, he has got to be present during this. He  
13 needed to step out and use the restroom?

14 **MR. BENNETT:** Yes.

15 **THE COURT:** Let me know when he's back.

16 **MR. BENNETT:** Okay.

17 **THE COURT:** Dave, can I talk to you?

18 (A recess was had at 11:35 a.m.)

19 (The following proceedings were held in open court  
20 beginning at 11:37 a.m., reported as follows:)

21 **DEPUTY CLERK:** All rise.

22 **THE COURT:** Mr. Weichman, you have to stick around.

23 **THE DEFENDANT:** I asked them.

24 **THE COURT:** Yeah, I know. I understand.

25 **MR. BENNETT:** It was an emergency, Your Honor.

1           **MR. GURLAND:** I apologize. We were trying to keep --

2           **THE COURT:** This is your sentencing.

3           **BY MS. BERKOWITZ:**

4           **Q.** Agent Hatagan, just for the sake of brevity, you prepared  
5 several other charts, 11, 10, Hatagan 10 through 21, in  
6 addition to the charts we've previously gone through, that  
7 explain how you arrived at the loss calculations that you have  
8 identified in Hatagan 1 and 2, is that correct, or the -- how  
9 you determined the W-2 -- where the W-2 income actually came  
10 from?

11          **A.** Correct.

12           **MS. BERKOWITZ:** I have no further questions for the  
13 witness.

14           **THE COURT:** You have any questions?

15           **MR. GURLAND:** Real brief, Your Honor.

16                           **CROSS-EXAMINATION**

17           **BY MR. GURLAND:**

18           **Q.** Agent Hatagan, you said that you looked at all the W-2s  
19 that Ari Weichman received from MMDS and Weichman and  
20 Associates during the period of the bankruptcy, correct?

21          **A.** Correct.

22           **Q.** You didn't look at the W-2s he received prior to the  
23 bankruptcy, did you?

24          **A.** I did not.

25           **Q.** Okay. You are aware, though, are you not, that he

1 received income from MMDS and Weichman and Associates prior to  
2 the bankruptcy?

3 A. He could have. I --

4 Q. And the income that he received he paid taxes on, correct?

5 A. He did.

6 Q. Every penny that he was required to pay he paid, correct?

7 A. He did.

8 Q. So the 700 some odd thousand dollars, the IRS actually  
9 received 28 to 30 some odd percent of, correct?

10 A. That is correct.

11 Q. And there was a statement made by Ms. Berkowitz that the  
12 loans were deducted -- or business deductions. Loans are not,  
13 in fact, business deduction, correct?

14 A. That is correct. In this case, a portion was  
15 re-categorized as compensation, which did make it deductible.

16 Q. Correct.

17 A. But the actual loans themselves were not deducted.

18 Q. Correct. So at the end of the year when the loan is  
19 reclassified and treated as W-2 income, that portion is then  
20 treated as a business deduction, correct?

21 A. That is correct.

22 MR. GURLAND: Nothing further, Your Honor.

23 MS. BERKOWITZ: Just one brief question, Your Honor.

24 THE COURT: Sure.

25 \\\

**REDIRECT EXAMINATION**

**BY MS. BERKOWITZ:**

**Q.** Agent Hatagan, were you aware of documentation from the Bank of England regarding Ari Weichman, his application for employment, in which he identifies his previous employment for the time period identified in your schedules as being Woodhalapenos and Jalapenos, no mention of MMDS or Weichman and Associates?

**A.** I saw exhibits for the Bank of England. I did not study them in any great detail, so I can't say that I have actually looked at it and saw what was or what wasn't disclosed. But I know throughout the course of assisting with preparation for the sentencing hearing I did see that there were exhibits for the Bank of England.

**MS. BERKOWITZ:** Thank you, Agent Hatagan.

**THE COURT:** Anything else?

**MR. GURLAND:** No, Your Honor.

**THE COURT:** Agent Hatagan, thank you.

**THE WITNESS:** Thank you.

**THE COURT:** Call your next witness.

**MS. BERKOWITZ:** The government calls Brian Visalli.

**MR. GURLAND:** Judge, I think we've already agreed we have no objection to all of his charts coming into evidence.

**THE COURT:** Okay.

(The oath was administered.)



1                   **THE WITNESS:**   I do.

2                   BRIAN VISALLI, GOVERNMENT WITNESS, SWORN

3                   **DIRECT EXAMINATION**

4                   **BY MS. BERKOWITZ:**

5                   **Q.**    Agent Visalli, can you please state your full name for the  
6                   record?

7                   **A.**    Brian with an I, last name Visalli, V, as in Victor,  
8                   I-S-A-L-L-I.

9                   **Q.**    Agent Visalli, how are you employed?

10                  **A.**    I'm a special agent with IRS Criminal Investigation.

11                  **Q.**    In the course of your duties as a special agent with the  
12                  IRS, were you involved in an investigation of Jack Weichman?

13                  **A.**    Yes.

14                  **Q.**    In fact, did you have an opportunity to speak with  
15                  Jack Weichman?

16                  **A.**    I did.

17                  **Q.**    Was that in February of 2017?

18                  **A.**    No, that was in --

19                  **Q.**    I'm sorry, 2012?

20                  **A.**    Yes, ma'am.

21                  **Q.**    I'm showing you a report of interview dated February 17,  
22                  2012. Is this the memorandum of interview that you prepared  
23                  following your conversation with Jack Weichman?

24                  **A.**    It was actually prepared by Lucretia Dunning Bridges  
25                  (phonetic), who was a special agent in my group when I was a

1 supervisor.

2 Q. And you were present during this interview?

3 A. I was present, and I reviewed it and signed off on it,  
4 correct.

5 Q. What triggered an investigation of Jack Weichman?

6 A. We became aware of some banking activity that we went out  
7 to speak to him about.

8 Q. What banking activity was that?

9 A. So various banks in this case, Centier Bank, filed some  
10 reports that we are able to access in our capacity, and so we  
11 looked at those reports, reviewed some of the transactions and  
12 decided we should go talk to Mr. Weichman to determine what was  
13 going on.

14 Q. Did any of those reports have something to do with  
15 \$350,000 in Horseshoe Casino checks?

16 A. I think it was more like 450, but yes.

17 Q. Did you ask Jack Weichman if he gambled?

18 A. We did.

19 Q. And was that recorded on this report of interview?

20 A. It is.

21 Q. And do we see it here? What paragraph would that be?

22 A. It looks like it is being talked about in seven and then  
23 in five.

24 Q. Paragraph 5?

25 A. Correct.

1 Q. So you asked Jack Weichman if he had some sort of gambling  
2 problem, and he responded he did not?

3 A. Yes.

4 Q. And where does he say he obtains his gambling money from?

5 A. He said he gets it as part of his salary from Weichman and  
6 Associates and MMDS. He takes loans from the company  
7 sometimes. He just takes a salary, and he gambles with that  
8 money.

9 Q. Was that -- based on your investigation subsequent to that  
10 statement by Jack Weichman, is that completely true?

11 A. At that time, we did not know it was not true. We  
12 obviously have since determined that was completely false.

13 Q. And in paragraph 8, what does Jack Weichman say he does  
14 with his credit cards? They are used for personal items,  
15 personal expenses?

16 A. Correct.

17 Q. Were you aware, at the time of this interview, that  
18 Jack Weichman had filed bankruptcy in 2008 and was still in  
19 bankruptcy?

20 A. We actually were not aware of that. Again, it might seem  
21 surprising, but when we're going off banking reports, sometimes  
22 we're just going off the banking reports, we actually don't  
23 pull additional information on an individual besides,  
24 obviously, a criminal record if we are going to go to talk to  
25 someone, for safety purposes.

1 In this case, we simply were going off the bank reports to  
2 go speak to the person, and we, of course, did pull a criminal  
3 record. But I'll tell you that we were unaware of the  
4 bankruptcy at that time.

5 Q. Let's go and talk about Defense Exhibit 26, if we can.

6 Let's take a look at page 11 of Defense Exhibit 26. First  
7 of all, this Fifth Third account, can you explain to us what  
8 this account is?

9 A. So we came to find out that there was a Fifth Third  
10 account that I believe stayed open until about 2008. It  
11 stopped being used in sometime around 2006, when that 390  
12 account was opened at Centier, but it was still utilized,  
13 again, throughout this whole period for personal expenditures  
14 of Dr. Ashbach.

15 Q. Now, you said you came to find out about it. Can you tell  
16 us when you came to find out about this Fifth Third account?

17 A. I believe we learned about it when we were speaking to  
18 Dr. Ashbach early on in the investigation. He informed us that  
19 he had this Fifth Third account.

20 Q. Did you seek to get financial records from Fifth Third  
21 going back to 2002?

22 A. Yes.

23 Q. Were you able to do that?

24 A. No, the bank didn't maintain anything prior to 2006.

25 Q. So is this the first time that you have seen anything

1 related to the Fifth Third checking account for David Ashbach?

2 A. Yes, when defense put it up for the first time.

3 Q. Can you tell us or point to us, does this appear to be a  
4 Centier loan that relates to David Ashbach's business?

5 A. No, but we don't know that for sure, whether it is a line  
6 of credit for, at that time, what would be Nephrology  
7 Specialists. It appears to be, again -- you know, when we have  
8 records like this, we interview people and we find out exactly  
9 what the monies are for; but in this case, it appears to  
10 coincide with that 2002 loan referenced Broadmoor.

11 Q. Who would you have interviewed had you had this  
12 information?

13 A. Centier Bank.

14 Q. And whose writing does this appear to be on these -- on  
15 this checkbook register?

16 A. Notwithstanding that I'm not a handwriting expert, it  
17 clearly appears to be Linda Einterz's handwriting.

18 Q. Why do you say that, Agent Visalli?

19 A. Because we seized numerous documents in the search  
20 warrant. We reviewed documents from Einterz's office, we met  
21 with Ms. Einterz a few times, and this clearly appears to be  
22 her handwriting. And I also know, based off the investigation,  
23 that she handled his personal expenditures.

24 MR. GURLAND: Your Honor, just to speed it along,  
25 this isn't in dispute. We will stipulate that this is

1 Linda's --

2           **THE COURT:** Yeah, I don't think anybody is disputing  
3 that.

4 **BY MS. BERKOWITZ:**

5 **Q.** Agent Visalli, did you prepare various exhibits that  
6 summarize the records that you have obtained in the course of  
7 the -- of your investigation of Jack Weichman?

8 **A.** Yes.

9 **Q.** And there are about -- let's see, 1 through 19?

10 **A.** Twenty, I think. One through 20 would be financial  
11 exhibits based off the flow of funds.

12 **Q.** Okay. And then you skip right to Visalli 28, is that  
13 correct?

14 **A.** Correct.

15 **Q.** I'm showing you what's been marked as Visalli No. 1. This  
16 is as to the Centier Bank loan, is that correct? Is that the  
17 right number, 4555 [verbatim]?

18 **A.** Yes. So the one ending 45555 [verbatim] is the line of  
19 credit that totals \$850,000.

20 **Q.** Okay. So what are you telling us right here?

21 **A.** Here we're just looking at -- our position is that these  
22 monies were diverted by Mr. Weichman, and the disposition of  
23 those funds, \$700,000 check to Jalapenos or Woodhalapenos, as  
24 its business name is, and another hundred thousand MMDS in  
25 2007, and we're saying those funds were obviously embezzled,

1 thus, ultimately, that 800,000 is part of our taxable  
2 computation as well.

3 Q. And then looking at Visalli No. 2.

4 A. Again, here's a \$50,000 disbursement from that loan, which  
5 makes its way to Ameristar Casino on April 24, 2008.

6 Q. You are referencing Centier 1C and 11A?

7 A. Correct, which, again, are the bank records -- associated  
8 bank records for both the loan and the 390 account.

9 Q. I'm showing you what's been marked as Visalli No. 3. Now,  
10 this is a summary of the LPL account for just the tax -- for  
11 the year 2009, is that right?

12 A. That's correct. So here, very simply, funds are coming  
13 out of the LPL account, they're flowing through the 390  
14 account, and they're ending up in the first two transactions  
15 totaling 100,000 going to Ameristar Casino, and the last one is  
16 \$60,000. That goes to Ron McColly.

17 Now, what that was for is Mr. Weichman had Mr. McColly  
18 write a check for \$60,000 to his bankruptcy attorneys, and then  
19 he returned the funds to Mr. McColly via a check out of the 390  
20 account.

21 Q. And Visalli 4 -- oh, by the way, let's back up.

22 For LPL, when was the very first time in the course of  
23 your investigation that you see money coming out of the LPL  
24 account?

25 A. I believe it's when -- because one of the first things we

1 do on our investigations is pull tax returns, and so we  
2 immediately saw that there were 1099s issued.

3 Q. In what year?

4 A. 1099Rs issued. In 2009.

5 Q. So 2009 was the first time?

6 A. Yeah. I'm trying to think exactly when the first time LPL  
7 jumped in my head. It would be during the investigation.  
8 Right in the beginning, when we open the case, we start  
9 requesting all that information we have access to at the IRS,  
10 and one of the forms that we first saw was the 1099R, which  
11 shows these distributions from LPL.

12 And, of course, one of the first questions I would ask is,  
13 of the witness in this case: Dr. Ashbach, are you aware of  
14 these receiving these funds?

15 Q. Did you ask him that question?

16 A. Of course, yes.

17 Q. What did he tell you?

18 A. No.

19 Q. When did you ask him that question?

20 A. When?

21 Q. When.

22 A. It would have been May 2, 2014, when I first interviewed  
23 him.

24 Q. There were no withdrawals. And LPL, did that exist in  
25 2005?



1 A. The LPL account?

2 Q. Yes.

3 A. I believe so.

4 Q. So nothing was being taken out of that account until 2009?

5 A. Correct. And so just to summarize this form very quickly,  
6 here are funds coming out of the 401K accounts at Stifel

7 Nicolaus and LPL, and all the funds flow through the 390

8 account. And as you can see in the second to last line, where  
9 it says disposition, it shows exactly where the money went:

10 Horseshoe Casino, MMDS, Ameristar, Weichman and Associates.

11 There was an overdraft in the MMDS account. Some of these  
12 monies covered that. And again, the last entry on June 15,  
13 2010, is \$270,000 to Jalapenos -- or Woodhalapenos.

14 Q. So for 2010, there was money taken out of not just LPL but  
15 another brokerage -- this is another retirement account, Stifel  
16 Nicolaus?

17 A. Correct.

18 Q. A total of over a million dollars?

19 A. Yes.

20 Q. And this is money that you clearly identify as being --  
21 going right to Jack?

22 A. Correct.

23 Q. Now, Agent Visalli, was there actually a lot more money  
24 that's coming out of the Stifel Nicolaus and LPL accounts?

25 A. Yes. So I have additional exhibits that show all of the

1 funds that came out of the accounts throughout the whole period  
2 under investigation, and there's significantly more. What we  
3 try to focus on, to be fair, is the funds that went directly to  
4 Jack Weichman within, basically, a 24-hour period.

5 Q. Why did you kind of select that?

6 A. Just the most conservative approach.

7 Q. So can you say with any degree of certainty, as for the  
8 other money, was it about \$5 million that you see coming out of  
9 those two retirement accounts?

10 A. Correct. So far our final position is, 2.4 was embezzled,  
11 and 5 million was taken out. What happened to the other 2.6?  
12 The answer is, I can't -- it is very possible that some of that  
13 additional funds did go to Jack Weichman for his benefit. We,  
14 for his --

15 Q. You mean to David Ashbach for his benefit?

16 A. Definitely some went to Dr. Ashbach, there's no doubt  
17 about that, for personal expenditures, et cetera, and so forth;  
18 but some of those more funds could have been taken by -- I  
19 think that's the point that you're getting at -- could have  
20 been also received by Mr. Weichman for his benefit.

21 For our purposes, we stayed conservative. We only  
22 followed the money that went to the casino or to another  
23 Weichman entity within basically a 24-hour period.

24 Q. Agent Visalli, can you tell us what Visalli No. 5 is  
25 showing us?

1 A. Okay. So this is an accounting of the money that came out  
2 of the Centier brokerage account. This is just \$60,000 that  
3 was taken out of the brokerage account. This is the DaVita  
4 stock that collateralized the loans, went to the 390 account,  
5 and then ended up in the Horseshoe Casino.

6 Q. What loans are we talking about that are collateralized?

7 A. The 850 total, which was initially the \$500,000 loan and  
8 then the \$350,000 increased line of credit.

9 Q. These were loans that were at Centier Bank taken out in  
10 the name of David Ashbach?

11 A. Correct, in 2006 and extended in '07.

12 Q. And Visalli 6?

13 A. Again, just 2012. Very straightforward. Source of the  
14 funds, LPL -- and SAA just means same as above -- Centier  
15 brokerage; and if you look all through the 390 account and then  
16 the disposition, Weichman and Associates, Horseshoe Casino, to  
17 Jack directly, MMDS, Rivers Casino. On October 31, 2012,  
18 \$90,000 was used to pay Jack Weichman's personal IRS debt, his  
19 own tax --

20 Q. Let's take a look at that. Exactly where are we looking  
21 at? The last -- October 31, 2012?

22 A. Yes.

23 Q. Did anything happen around that time, October of 2012?  
24 Did David Ashbach have a tax debt that he was notified of  
25 around that time?

1 A. I don't know if he was notified about it at that time. I  
2 know from the investigation that his 2012 tax year tax return  
3 had a tax due and owing of over \$300,000, a balance due.

4 Q. That had not been paid?

5 A. Had not been paid. And I found this out I believe during  
6 our initial meeting with Dr. Ashbach, where he said the first  
7 time that -- because I think I recall asking him: When was the  
8 first time you had any inkling that there might be a problem?

9 And he told me that he received a letter from the IRS in  
10 early 2014 that he owed the IRS \$300,000. And he said that  
11 made no sense because he only makes \$300,000 a year, how could  
12 he owe the IRS \$300,000 a year.

13 So it turned out, both based off my investigation and the  
14 information he was providing me, that he did owe the IRS  
15 \$300,000, even in early 2014, for the 2012 tax year that was  
16 never paid on his behalf.

17 Q. So this chart is telling us that Jack Weichman took money  
18 out of the brokerage account that belongs to David Ashbach and  
19 used money to pay his own personal taxes?

20 A. Correct.

21 Q. Not his client's?

22 A. Correct.

23 Q. By the way, for that year, for 2012, there's nothing  
24 referenced for Stifel Nicolaus, there was no money removed in  
25 2012?

1 A. The Stifel Nicolaus account, 401K account, was completely  
2 exhausted at this point.

3 Q. There's nothing left in that?

4 A. No, they closed at, like, zero dollars.

5 Q. This is a retirement fund account, right?

6 A. Correct, yeah.

7 Q. Taking a look at Visalli No. 7 -- and, again, you are  
8 summarizing the voluminous records that you received from  
9 Centier Bank, from Horseshoe Casino. Are we talking about  
10 hundreds, thousands of pages of records that you are  
11 summarizing here?

12 A. I don't know about hundreds of thousands but thousands.

13 Q. Thousands. Okay.

14 A. So, again, just to be quick, LPL, Centier brokerage  
15 account, monies coming out of there going to the 390 account,  
16 and then, again, being used at the Horseshoe and Rivers Casino  
17 in this case.

18 Q. Visalli No. 8, this is just summarizing the money that's  
19 being taken out of Brenda Eriksen's business account,  
20 transferred into 390, and then ends up with the defendant at  
21 the casinos, is that correct, Agent Visalli?

22 A. Correct. Correct.

23 Q. I'm showing you Visalli No. 9. What is this?

24 A. This is simply a summary of money that was transferred to  
25 various E\*Trade accounts from Weichman and Associates and MMDS,

1 and in this case, it was Ari Weichman's E\*Trade account.

2 The issue here is transferring funds prior to a bankruptcy  
3 filing. You have to disclose that to the trustee. These  
4 transfers were never disclosed to the trustee, based off of our  
5 investigation.

6 So this is simply a summary of monies coming out of,  
7 again, the two companies into Ari Weichman's E\*Trade account.  
8 The importance of this is these monies will later be taken out  
9 and used by the defendant.

10 Q. Without the knowledge or permission of the bankruptcy  
11 court or creditors?

12 A. Correct. They never knew about it.

13 Q. What is Visalli No. 10 showing us?

14 A. Here are the distributions. So here time now has gone by.  
15 It is now October 18 -- excuse me, 14, 2011. Money is coming  
16 out of the E\*Trade account. It gets deposited into  
17 Ari Weichman's 252 account. Then it gets moved to  
18 Jack Weichman's DIP account.

19 Now, this is after the monthly reporting requirements for  
20 the DIP account have expired, and you no longer -- the trustee  
21 is no longer receiving any banking information.

22 Q. So this is into Ari's E\*Trade account?

23 A. Correct. No, this is from Ari's E\*Trade account.

24 Q. Ari's -- from his E\*Trade account.

25 A. Into accounts held by Ari and then transferred to accounts

1 held by Mr. Weichman.

2 Q. So you have summarized, have you not, in Visalli No. 11,  
3 what happens with the Stifel Nicolaus accounts?

4 A. Again, to be clear, here is just the Stifel Nicolaus total  
5 account funds that were distributed out of it, zeroing it out  
6 by February 12, 2010. And also, to be clear, not all of these  
7 funds are part of the amounts that may or may not have gone  
8 directly to Jack Weichman.

9 Q. You are just showing --

10 A. This is just total --

11 Q. -- what transferred out --

12 A. This is the money that came out, correct.

13 Q. And are you doing the same thing here in Visalli No. 12,  
14 as it relates to the LPL financial account?

15 A. Same thing, money that came out of the LPL account, where  
16 it went. And, for instance, there's money here that went to  
17 the Fifth Third account. Well, that would be the Fifth Third  
18 account ending 980. That was actually Dr. Ashbach's personal  
19 account.

20 Now, the disposition of the 72,000, whether it was for his  
21 use or something else, I don't know, but these are all the  
22 monies that came out of the LPL account. And again, to be  
23 fair, not all of it went to Mr. Weichman or was embezzled by  
24 Mr. Weichman in this case.

25 Q. Where was this Fifth Third checkbook kept, by the way?

1 Was that kept at Weichman and Associates?

2 A. That's my understanding.

3 Q. Okay. And you didn't see or obtain that Fifth Third  
4 checkbook at the time of your search?

5 A. We didn't, and there's a number of reasons why that could  
6 have happened. When we do search warrants of that size, I  
7 think we had 30, 40 agents, and so everyone has their marching  
8 orders, here is the stuff you can take under the attachment to  
9 the search warrant.

10 We're also limited on years of things we could take, so it  
11 is very possible an agent could have come across that checkbook  
12 and said, oh, it is from 2002, we can't take it. I don't know.  
13 The reality is, in our search warrant records we have, I didn't  
14 see it.

15 Q. So you weren't like a vacuum cleaner; you didn't Hoover  
16 everything up that was in your path?

17 A. No. In fact, there was probably somewhere in the  
18 magnitude of 10,000 boxes in that place. I think we left with  
19 50 boxes, physical boxes.

20 Q. And Visalli 13?

21 A. Again, just a complete accounting of the brokerage account  
22 of all the monies that came out of there.

23 Q. This is the DaVita stock account that guaranteed the lines  
24 of credit at Centier Bank, is that right?

25 A. Correct. Correct. And to be fair, not all of this money



1 went to Jack. Some of it was used by Dr. Ashbach.

2 Q. Now, I'm showing you what's been marked as Visalli No. 14  
3 that you identify as a summary of payments to Jackson National  
4 Insurance Policy 9070. Was this particular insurance policy --  
5 it's a life insurance policy, Agent Visalli?

6 A. Yes.

7 Q. Was this identified to the bankruptcy court by the  
8 defendant?

9 A. This one was not.

10 Q. Okay. So what are you summarizing here for us?

11 A. Very simply, the bankruptcy trustee is not aware of this  
12 policy. Throughout the course of the whole bankruptcy, monies  
13 coming out of Weichman and Associates, as Revenue Agent Hatagan  
14 testified, these were some of the funds that were then placed  
15 into that Ari receivable account; but those funds are flowing  
16 through Ari's bank accounts -- where it says at the top: Ari  
17 and Jack had a bank account ending 966, that flowed through one  
18 of Ari's personal bank accounts, or two of his personal  
19 accounts, ultimately went into an account named Jack Weichman  
20 Cable Trust, actually in other doctor's name, I believe -- I  
21 could be wrong, I'm guessing now, but I believe -- and then  
22 those funds were then used to make payments to Jackson National  
23 to service the policy, and that policy had a cash surrender  
24 value.

25 Q. You've summarized that by year -- or where it is coming

1 from?

2 A. Correct.

3 Q. Okay. From 2009 through 2012?

4 A. Correct.

5 Q. And Visalli 15 is a summary of boat payments. What's the  
6 significance of this, Agent Visalli? Why do we care about a  
7 summary of boat payments?

8 A. Okay. So right there at the bottom of the spreadsheet, it  
9 says, "Note: On October 2010, in the monthly cash flow report  
10 to the U.S. Bankruptcy Trustee, the representation was made  
11 that this will be the final payment on the boat and that they  
12 are disposing of the boat." But the spreadsheet, and what we  
13 came to find out, is that they continued to service paying the  
14 boat and keeping the boat, concealing it from the bankruptcy  
15 trustee, and they did that by funneling money out of Weichman  
16 and Associates into one of Ari Weichman's personal accounts,  
17 and then Ari would then write checks to JP Morgan, who was the  
18 lien holder on the boat.

19 Q. The top half of your document shows the money coming out  
20 of Weichman and Associates into Ari's bank account, the amount,  
21 and then corresponding payments that Ari has been making to JP  
22 Morgan Chase for the boat?

23 A. Correct.

24 Q. Can you tell us what Visalli 16 is?

25 A. So Visalli 16 is a summary of diverted funds from

1 Nephrology Specialists. As we know, Dr. Ashbach was the  
2 president of Nephrology Specialists, his physician group, for  
3 quite some time. During that period, it was commonly -- a  
4 notes payable account was commonly kept for him, meaning he  
5 would take loans from the company for whatever he needed money  
6 for, and at the end of the year, they would pay some of it  
7 back.

8 Well, in this case, as we were going through some of the  
9 checks that we were finding in the MMDS account, what we found  
10 is some of those checks coming out of Nephrology Specialists  
11 that were ultimately booked as loans to Dr. Ashbach weren't, in  
12 fact, loans to Dr. Ashbach. They were monies, again, being  
13 diverted by Mr. Weichman for his own personal use.

14 And so this summarizes \$410,000 that was taken out of  
15 Nephrology Specialists, booked as a loan to Dr. Ashbach, thus  
16 he's on the hook for it, and the money then flows through  
17 MMDS -- it flows from Nephrology Specialists to MMDS's account,  
18 and then there's two wire transfers to E\*Trade accounts for Ari  
19 and Mr. Weichman, and these are trading accounts for stocks,  
20 and then another payment, which I know Dr. Eriksen testified  
21 to, a \$300,000 check to pay a loan back to her that she was  
22 unaware that she made. And then, again, there was a negative  
23 balance in MMDS, so 50,000 of the monies covered that.

24 Q. Now, for purposes of the tax loss, did you summarize the  
25 unreported income for Jack Weichman for the years 2007 through

1 2013?

2 A. We did, and this is for relevant conduct purposes,  
3 obviously, and so we looked at all the monies that were, as our  
4 position is, diverted. And if you embezzle money, as everyone  
5 knows, it is income.

6 Q. And you have done this by year?

7 A. Yes.

8 Q. And the total of unreported income is identified in the  
9 last page of the document?

10 A. 2007 through 2013, \$4,427,000.

11 Q. Now, does this figure include the taxes that Jack Weichman  
12 dumped on David Ashbach for those withdrawals that were being  
13 taken out of David Ashbach's retirement fund accounts and the  
14 Centier brokerage account?

15 A. No. This is just the income attributable directly to  
16 Mr. Weichman.

17 Q. Okay. I'm showing you Visalli 18.

18 A. So as you asked right out of the gate, this is the  
19 \$452,000 in the banking activity that first came to our  
20 attention that we went and spoke to Mr. Weichman about.

21 In this case, numerous checks from Horseshoe Casino and  
22 Rivers Casino were deposited into Ari Weichman's personal bank  
23 account.

24 Q. Did Jack Weichman tell you why he did that? Did you ask  
25 him, what's going on with this?

1 A. We did, and the reality is his answer ultimately caused us  
2 to open an investigation. His answer was to boost his son's  
3 credit rating.

4 Q. Does that even make sense?

5 A. Of course it doesn't make sense, and so we obviously moved  
6 forward.

7 Q. Additional summary that you have done, Visalli 19, of  
8 insurance checks. Can you tell us what this is? Are these --  
9 any of these insurance policies, were these disclosed in the  
10 bankruptcy?

11 A. So on the top line, Northwest Mutual, actually, one of the  
12 policies was disclosed, and one of them wasn't. So that  
13 disbursement of 91,000 and change is a combination of two  
14 policies. One of them was disclosed, the other one wasn't.  
15 Just to be clear, the disbursement -- this disbursement itself  
16 was never disclosed to the trustee.

17 So what you have here is checks coming from insurance  
18 policies with cash surrender values that were never disclosed.  
19 These disbursements, these assets that were issued, were never  
20 disclosed to the trustee; and as you can see, they were used to  
21 pay Horseshoe Casino debt of 200,000.

22 Q. And Visalli 20, what are you summarizing here?

23 A. So, again, this is our conservative position of the  
24 \$2,417,000 of monies directly embezzled from Dr. Ashbach. And  
25 you see the source, we went through all the spreadsheets that

1 are listed as the exhibits on the far right, and \$2,417,000  
2 that went to, obviously, the disposition that we discussed  
3 earlier, mostly casinos.

4 Q. I see also there seems to be a \$270,000 payment that's  
5 being made in 2010 -- I'm sorry, June 2010, out of the LPL  
6 account and deposited into Woodhalapenos.

7 A. Correct, and we talked about this one before. What the  
8 purpose of that was -- we're speculating that was for the  
9 liquor license.

10 Q. And defendants don't contest this, is that correct?

11 A. That I don't know.

12 Q. This figure, the \$2,417,000?

13 MR. GURLAND: Judge, we stipulated to this amount  
14 already.

15 THE COURT: Proceed.

16 BY MS. BERKOWITZ:

17 Q. Finally, your summary of Visalli 28, what is this?

18 A. So this is that issue of taxes, trying to compute the  
19 taxes that Dr. Ashbach paid on funds he never received. And so  
20 we were relying on amended returns submitted by his  
21 accountants. Of course, we reviewed the returns for correct  
22 treatment, and we determined, with the help of Revenue  
23 Agent Hatagan, that under the Code Section 165 for the Internal  
24 Revenue Code, the proper treatment of taking a theft loss in  
25 the year that you discover it is the appropriate treatment, and

1 then carrying it back three years.

2 Long story short, the computation comes out to \$488,000,  
3 275 of that of taxes he paid that he shouldn't have for monies  
4 he didn't receive. And of those funds, the IRS has already  
5 returned \$49,803, meaning they are processing these returns and  
6 accepting them as true.

7 **Q.** Now, does this calculation or the way the IRS permits you  
8 to file an amended fraud return, does that mean that there's  
9 going to be some years where David Ashbach was defrauded by the  
10 defendant, money was taken out of his brokerage retirement  
11 accounts, he paid taxes on it, that he can't capture, he can't  
12 get returned?

13 **A.** Correct. This is a civil treatment. It doesn't reflect  
14 what -- maybe potentially the true harm. Just to be fair, it  
15 could reflect -- he could be receiving more than he actually  
16 lost. I don't know. The reality is, per the civil treatment  
17 of the theft loss, he was hit with \$488,000 and some changes of  
18 taxes he shouldn't have had to pay.

19 **THE COURT:** You have no idea how much he's going to  
20 get back when he files amended returns?

21 **THE WITNESS:** No, he's filed amended returns,  
22 Your Honor. He'll get those numbers back is what he'll get.

23 **THE COURT:** That's for certain though?

24 **THE WITNESS:** That's what he'll get.

25 **THE COURT:** \$488,000?

1           **THE WITNESS:** Correct. But, again, when you start  
2 talking about accounting treatment and different years, you're  
3 dealing with what was the effective tax rate of 2011, had he  
4 not had to pay taxes back then versus a carryback. There's a  
5 lot of different nuances that could mean the numbers can go up  
6 or down.

7           In this case, I would argue this is probably -- he's  
8 getting back potentially less than he should, but why  
9 speculate? This is the civil treatment, and these are the  
10 amounts.

11 **BY MS. BERKOWITZ:**

12 **Q.** Agent Visalli, is there any doubt that David Ashbach ended  
13 up getting hit with the tax for money that he didn't get?

14 **A.** Again, at least almost \$500,000.

15           **MS. BERKOWITZ:** Could I just have a moment,  
16 Your Honor.

17           **THE COURT:** (No response.)

18 **BY MS. BERKOWITZ:**

19 **Q.** One more thing, Agent Visalli. Did you ask for or receive  
20 Blackhawk tickets from David Ashbach?

21 **A.** If I could just speak freely on this issue.

22 **Q.** Go ahead.

23 **A.** So I couldn't figure this out. I thought the whole thing  
24 was a joke. And not until everything happened in the courtroom  
25 did I realize what this may be from.



1           So back in May of 2000, May 2<sup>nd</sup>, the first time I met  
2     David Ashbach, we interviewed him. We immediately asked him if  
3     he would be willing to make consensual monitoring phone calls  
4     with Mr. Weichman. He agreed.

5           On May 6<sup>th</sup>, he came to my office. We made several phone  
6     calls between Dr. Ashbach and Mr. Weichman. We recorded those  
7     phone calls. And then again, on May 15<sup>th</sup>, 2014, I had  
8     Dr. Ashbach come in again to make more additional phone calls.

9           What I recall is at the end of those phone calls, it was  
10    approximately 12:30, 12:35 a.m. in the morning, I was packing  
11    up all my stuff, I was taking all my evidence, I was securing  
12    the consensual monitoring phone call tapes, putting them in and  
13    locking them away; and Dr. Ashbach was sitting there and we  
14    were talking.

15          I was going to walk him out that evening; and I think he  
16    saw some of my Einstein stuff in my cubicle. We started  
17    talking about Einstein and the universe, et cetera, and  
18    Dr. Ashbach said, Hey, would you like to come to a Minnesota  
19    Wild playoff game with me? And, of course, my response was, I  
20    absolutely cannot do that, nor could I ever do that. And  
21    that's the extent of any knowledge I have with anything to do  
22    with Blackhawk tickets.

23    **Q.**    Did this come up again recently?

24    **A.**    It did only when I received a phone call from Mr. Gurland;  
25    and, you know, Mr. Gurland calls me regularly to try to get

1 information. I have no issue with that. I know you do  
2 sometimes, but kidding aside, he called me; and he said, Which  
3 one of you took the tickets, Jason or you? And I thought it  
4 was a joke. I thought it was a complete joke. I just thought  
5 he was joking around. So I just laughed it off, in a sense.

6 Q. Did this ever -- did David Ashbach ever mention this  
7 recently?

8 A. Well, we were meeting with Dr. Ashbach and his attorney.  
9 That's the same meeting we discussed the Jalapenos agreement  
10 that we received in the government [verbatim]. And I asked,  
11 What's this thing about these tickets that I was asked about?  
12 And Dr. Ashbach -- and we asked Dr. Ashbach, Did they ask you  
13 about that? And he said, Yes.

14 And then we were done, and I still thought it was a joke.  
15 It was still unclear to me as to what was going on. As we were  
16 walking Dr. Ashbach out after the meeting to open the door for  
17 him and get him out, I said to Dr. Ashbach, I said, You guys  
18 are funny. What are you guys talking about? And Dr. Ashbach,  
19 I thought, jokingly said, Don't worry, I won't say nothing  
20 about it.

21 And so I was completely caught off -- I thought  
22 Dr. Ashbach -- he does have a sense of humor. I thought he was  
23 still messing with me at that point as to the reality or lack  
24 thereof of these tickets. And that is, again, the extent of  
25 this whole Blackhawks ticket thing.

1 Q. So it is your testimony you have never received Blackhawk  
2 tickets from David Ashbach, is that correct?

3 A. That's correct. Diane, I have been in Chicago for 16  
4 years. I have never gone to a professional event ever, and I'm  
5 only saying that because I probably wouldn't take tickets if  
6 someone offered them to me, let alone -- but in this case  
7 specifically, I certainly did not take tickets from  
8 Dr. Ashbach.

9 Q. With respect to Jamie Dow, she wasn't able to testify  
10 today, but did you have an opportunity to review her grand jury  
11 testimony?

12 A. We did, and we interviewed Ms. Dow several times. And  
13 I'll just get to the heart of it.

14 MR. GURLAND: Your Honor, you said you would accept a  
15 proffer of this.

16 THE COURT: Well, I will take it right now, and then  
17 we can dispense with it then.

18 THE WITNESS: So what Ms. Dow testified to, and I'll  
19 give the nutshell version, she testified that she started  
20 maintaining this cash sheet, and this is the sheet that is, I  
21 believe, Search Warrant Exhibit 111.

22 This sheet was found during the search warrant  
23 electronically on the computer systems of Weichman and  
24 Associates. This sheet started to be maintained in June 2006,  
25 when the loan was taken out, and it basically accounted for

1 every penny that came out of any of Dr. Ashbach's funds and  
2 where it went.

3 There are very minimal mistakes in it, based off my  
4 analysis and the bank records that we had access to. What we  
5 learned is that Ms. Dow maintained that spreadsheet at the  
6 direction of Jack Weichman for many years up until 2011 when  
7 she left Weichman and Associates for different employment. And  
8 at that point we learned, not by Ms. Dow but by speaking with  
9 Ms. Einterz directly, that Ms. Einterz took over control of  
10 that spreadsheet.

11 So from Jamie Dow we learned that she maintained that  
12 spreadsheet from 2006 through 2011, and her testimony was she  
13 put everything in there and during that course had a lot of  
14 concern of what she was seeing.

15 Q. And did she express the concern to anybody?

16 A. She emphatically stated she would go to Jennifer McGuire  
17 and Linda Einterz on occasions to express her concern on what  
18 she was seeing.

19 Q. Did Jamie Dow specifically say that Linda Einterz made fun  
20 of her and actually had a rather interesting comment?

21 A. I believe the comment was something along the lines of  
22 Jamie went to her very upset, and Linda said to her, Don't  
23 worry about it, you will look good in stripes.

24 Q. Linda Einterz, when you first interviewed her, was this  
25 during the search?

1 A. I did not interview her. Other agents interviewed her at  
2 her residence the day of the search.

3 Q. Okay. Did you have an opportunity to review that  
4 interview report?

5 A. I did.

6 Q. And was that interview report, based on everything that  
7 you have learned subsequently, was that interview report honest  
8 and correct?

9 A. I believe based off the evidence Linda Einterz clearly  
10 lied to federal agents that day.

11 Q. What did she lie about that day?

12 A. Her involvement with Dr. Ashbach's finances.

13 Q. Was she asked if she knew anything about the brokerage  
14 accounts?

15 A. She was.

16 Q. What was her response?

17 A. She didn't handle that, she knows nothing about it.

18 Q. At some point in time, did that change?

19 A. Yes.

20 Q. Did Linda Einterz actually have a lawyer? She got a  
21 lawyer, is that right?

22 A. I believe --

23 Q. Her brother-in-law?

24 A. I believe her brother-in-law, yeah.

25 Q. And she was advised that she was not a target or subject

1 of any investigation as long as she is truthful and honest, is  
2 that correct?

3 **A.** Yes.

4 **Q.** And she went into the grand jury and she testified, did  
5 she not?

6 **A.** She did.

7 **Q.** And that's part of the sentencing exhibits from the  
8 government in this case, isn't it?

9 **A.** Yes.

10 **Q.** And did she have a slightly different story that she told  
11 at that point?

12 **A.** I believe she was more truthful in her grand jury  
13 testimony.

14 **Q.** Was she also advised during that grand jury that if she  
15 needed to -- if any question was of concern to her that all she  
16 needed to do was say she needed to go out and speak with her  
17 lawyer?

18 **A.** Based off my reading of the transcript, yes.

19 **Q.** She never asked to speak to her lawyer, did she?

20 **A.** My understanding is she did not.

21 **MS. BERKOWITZ:** If I could have a moment.

22 **THE COURT:** (No response.)

23 **MS. BERKOWITZ:** I have no further questions.

24 **THE COURT:** How long are you going to have with this  
25 witness?

1 MR. GURLAND: A minute.

2 THE COURT: Okay. Proceed.

3 CROSS-EXAMINATION

4 BY MR. GURLAND:

5 Q. Agent Visalli, you and I agree that David Ashbach's  
6 testimony that you took Blackhawk tickets is false, correct?

7 A. Yes.

8 Q. And you indicated that this investigation began with your  
9 discovery of monies going in and out of casinos, correct?

10 A. Yes.

11 Q. And Jack Weichman, when you interviewed him, told you that  
12 he didn't really gamble, correct?

13 A. No, he said he gambled.

14 Q. My understanding from your report that you read today was  
15 he told you he didn't -- that he didn't -- that the money at  
16 the casinos was for markers, it wasn't money he was gambling.

17 A. That's not my understanding. I recall that he said, I  
18 gamble, and he gave us the frequency -- I would have to look at  
19 the memo -- and that he said he usually carries markers, which  
20 is, I believe, about \$250,000, \$200,000. I believe the markers  
21 did come up, but I don't recall this idea of not gambling with  
22 money.

23 Q. Let me say it this way: You did an analysis at that  
24 point, then, of his gambling activity, correct?

25 A. At that point during that meeting, we had banking reports

1 that showed specifically \$452,000 going to an account held by  
2 Ari Weichman, and that was the subject of the interview. The  
3 analysis that you may be alluding to came later.

4 Q. And that analysis showed millions of dollars going into  
5 casinos and fewer millions coming out, correct?

6 A. Right. So we later -- and just to be fair, in an  
7 administrative investigation. This was not a matter with the  
8 United States Attorney's Office here yet. We ultimately  
9 referred the case down the road a little bit. At this point,  
10 that knowledge came when we summonsed the casinos for their  
11 records, and we were able then to get into those records and  
12 make the determination I believe you are speaking about.

13 Q. And you determined that there were substantial gambling  
14 losses?

15 A. Again, losses -- my position is what we were analyzing  
16 were the monies going into this casino and coming out. To  
17 compute the losses, especially if you are a gambler, and not  
18 even speaking in this case, if you are a gambler or someone  
19 that plays a lot of money at a table, there's a lot of money  
20 being played. And what they end up losing on a given night,  
21 that may not be accounted for in the in-and-out sheets, but I'm  
22 not an expert on this stuff. But my analysis, and the one that  
23 I think you are referencing, is eight million --  
24 eight-point-something million went into the casino during the  
25 course of 2008 through 2012, and about 6.3 went out during that



1 same period. Does that mean he lost \$2,500,000? Not  
2 necessarily, just to be clear.

3 **Q.** But a substantial gap between money going in and money  
4 going out?

5 **A.** Yes. Yeah.

6 **MR. GURLAND:** Nothing further, Your Honor.

7 **MS. BERKOWITZ:** No further questions.

8 **THE COURT:** Sir, thank you. You may step down.

9 We are going to take about a 60-minute break. We'll pick  
10 back up at 1:25.

11 Are you done with your witnesses?

12 **MS. BERKOWITZ:** I am, Your Honor, and there's some  
13 exhibits that I just need to make sure I have entered in on the  
14 record.

15 **THE COURT:** Okay.

16 And are you going to have any additional witnesses?

17 **MR. GURLAND:** No, Your Honor.

18 **THE COURT:** Okay. All right. We'll pick back up in  
19 an hour.

20 (A recess was had at 12:25 p.m. )

21 (The following proceedings were held in open court  
22 beginning at 1:33 p.m., reported as follows:)

23 **DEPUTY CLERK:** All rise.

24 **THE COURT:** All right. You can be seated.

25 We're back on the record in United States versus Weichman,

1 Cause No. 2:14-CR-93. Okay. So I'll give the parties an  
2 opportunity to make any final comments before I make my  
3 guideline determinations about what I just heard.

4 Ms. Berkowitz.

5 **MS. BERKOWITZ:** Your Honor, just for the record, just  
6 a couple of housekeeping things.

7 **THE COURT:** Oh, sure.

8 **MS. BERKOWITZ:** I believe that we have already given  
9 to the Court Government's Exhibit 1, which is a list of all the  
10 sentencing exhibits that are relied on and incorporated into  
11 the summaries in this case, as well as a disk containing those  
12 exhibits.

13 We have some additional exhibits that were referenced  
14 during the sentencing that we want to make sure are included  
15 within the record, and that would be McGuire 1, which is a  
16 grand jury transcript of Jennifer McGuire; Prokop 1 and 2,  
17 which is the proof of claim from the IRS, Prokop 1, and Prokop  
18 2 being the bankruptcy court filing, Docket Entry 36, summary  
19 schedules for Defendant Weichman's bankruptcy.

20 Additionally, we have the -- we mentioned this. We did  
21 not actually specifically reference it outside of the schedules  
22 which contain the same information, Prokop 3, which is a  
23 separate list of the unsecured creditors in the bankruptcy  
24 case. This has been produced to defense counsel.

25 **THE COURT:** Can you hand those to me.

1 (Documents tendered.)

2 So this Prokop 3, is there a total here at some point?

3 **MS. BERKOWITZ:** That would appear actually on  
4 Prokop 2, which is the summary schedule. So if you look at  
5 schedule, I believe it is F, that's the unsecured claims that  
6 identifies \$1.3 million in unsecured claims.

7 **THE COURT:** Oh, I see. Yeah. Got it.

8 Okay. So anything that you wish to say on the disputed  
9 objections? Why don't we start with the vulnerable victim  
10 issue. You are claiming that Dr. Ashbach was a vulnerable  
11 victim, is that right?

12 **MS. BERKOWITZ:** I am, Your Honor. I think as we  
13 heard through the course of this sentencing, that Jack Weichman  
14 controls people by one of two ways, through fear or  
15 manipulation.

16 You heard testimony from Drs. Eriksen and Lazzaro, and  
17 they told you about this fear. These are very smart people.  
18 They were nonetheless intimidated by Jack Weichman, and  
19 Dr. Eriksen talked about challenging Jack Weichman on some  
20 billing that was being done by MMDS, and his response to her  
21 was, Hey, I do the billing, you do the medicine. Don't ask.

22 And she didn't, she said, because she knew what happened  
23 with Dr. Lazzaro. She knew that Jack Weichman could be  
24 menacing, that he could make trouble for her. He knew -- she  
25 said that she knew he had some control and authority at the

1 hospital.

2 You then heard the testimony of Dr. Lazzaro, who stated  
3 that he was, in fact, threatened by this defendant. He was  
4 threatened with being ruined because Dr. Lazzaro took some  
5 legal action regarding Jack Weichman's failure to disclose  
6 information about Dr. Lazzaro's --

7 **THE COURT:** Isn't that all accounted for in the abuse  
8 of position of trust? I mean, that's really capturing abuse of  
9 position of trust --

10 **MS. BERKOWITZ:** Absolutely, Your Honor.

11 **THE COURT:** -- breaching his fiduciary duty, and  
12 they've agreed with that.

13 **MS. BERKOWITZ:** Your Honor, I mention that only for a  
14 frame of reference.

15 **THE COURT:** Okay.

16 **MS. BERKOWITZ:** So, you know, these are people --  
17 they are smart. The defendant is threatening them. He  
18 manipulates them through fear.

19 But with Dr. Ashbach, it is different. Dr. Ashbach is no  
20 less smart. He is a physician, smart guy, but he is  
21 manipulated by this defendant repeatedly, continuously,  
22 including into last week, where defense counsel is planting  
23 this goofy idea that somehow Agent Visalli got some Blackhawk  
24 tickets in an effort to diminish Agent Visalli's testimony or  
25 make it seem as if he is a liar and we've failed to disclose

1 something.

2 I believe at one point in the hearing Attorney Gurland  
3 said, you know, I asked for information from the government,  
4 and it wasn't provided to me. This was all an act, an effort  
5 to manipulate Dr. Ashbach.

6 But that's not the worst of it. I think probably the  
7 greatest example of the manipulation that went on with  
8 Dr. Ashbach is this agreement, Defense Exhibit 15. That  
9 agreement doesn't do anything to protect Dr. Ashbach. The way  
10 it is worded even is Dr. Ashbach says --

11 **THE COURT:** Was he represented by counsel in the  
12 negotiation of that agreement?

13 **MS. BERKOWITZ:** That's what he said, Your Honor. He  
14 was represented by counsel. But as Dr. Ashbach said, the  
15 reason why he entered into this agreement is he wanted  
16 something. He wanted to get something.

17 You know, this has been going on for years. This  
18 defendant was indicted in 2014, I believe, for the first time.  
19 And we have been awaiting sentencing. It has been repeatedly  
20 continued at defendant's request.

21 **THE COURT:** That's because his old lawyer is  
22 Mr. Kirsch, I mean, so that's not -- you know, let's be fair  
23 about it. They had to get new lawyers, and it took time; and  
24 as you said, it is a complicated case, so --

25 **MS. BERKOWITZ:** Dr. Ashbach has stated, and as has

1 Dr. Brenda Eriksen, Jack Weichman provides a unique service.  
2 It is a service that Dr. Eriksen was willing to go without.  
3 She decided that the comprehensive nature of the services  
4 provided by Jack Weichman, you know, given what has happened to  
5 her, she wasn't going to deal with him anymore.

6 But David Ashbach is not the same kind of person. He  
7 relies entirely, wholly on Jack Weichman to perform all these  
8 services, the credentialing, the running of his medical  
9 practice, the billing, the finances. And he has stated to you  
10 on the stand, Your Honor, that he is intimidated by finance,  
11 that he is uncomfortable with it. I can't think of a clearer  
12 picture of someone who is vulnerable to the actions of  
13 Jack Weichman than David Ashbach.

14 He is wholly dependent and reliant on Jack Weichman to  
15 operate his practice and handle his finances, unlike  
16 Dr. Eriksen or Dr. Lazzaro.

17 And even when confronted with these abuses, David Ashbach  
18 doesn't file a lawsuit. He hasn't filed a lawsuit yet.  
19 Although he is contemplating now how many years later about  
20 filing a lawsuit against Centier, he didn't take legal action  
21 against Jack Weichman. It is not because of David Ashbach that  
22 we are here in this court. He didn't come to us and say, I've  
23 been a victim. He was hoping to get paid. He was hoping that  
24 Jack Weichman would take care of this. But you notice,  
25 Your Honor, none of this stuff has happened until very

1 recently, including even this agreement.

2 And the agreement itself doesn't protect David Ashbach on  
3 that loan that's outstanding that got transferred to First  
4 Financial. That loan is something that David Ashbach is on the  
5 hook for, and he told you the reason why he agreed to that  
6 transfer is because he felt if Jack Weichman defaulted the bank  
7 would take his brokerage account. So he felt he had no choice.  
8 He wasn't represented by counsel at that time.

9 Also, David Ashbach has stated that he sees this defendant  
10 like a brother. And this defendant, like David Ashbach's  
11 brother, is a thief. David Ashbach didn't take any action  
12 against his own family, and he certainly didn't take any action  
13 against Jack Weichman, and Jack Weichman knew this.  
14 Jack Weichman knew all this about his victim. He knew that of  
15 all the people he's dealing with, David Ashbach is the most  
16 easily manipulated because of the affection he holds  
17 Jack Weichman in, because of David Ashbach's very nature.

18 **THE COURT:** All right.

19 Mr. Gurland, you want to -- or Mr. Bennett --

20 **MR. BENNETT:** I will, Your Honor.

21 **THE COURT:** -- you want to respond?

22 **MR. BENNETT:** Your Honor, the most direct response is  
23 that this isn't -- the arguments counsel was making aren't of  
24 the sort that Guideline 3A1.1 address.

25 The guideline is supposed to be for a vulnerable -- a

1 vulnerable victim is defined as a victim of the offense who is  
2 unusually vulnerable due to age, physical or mental condition,  
3 and we can talk about that, or who is otherwise particularly  
4 susceptible to the criminal conduct.

5 Dr. Ashbach is getting up in years, certainly. He's 73  
6 years old; but by his own testimony, he's practicing full time,  
7 impressive hours, 50 or 60 hours a week. He certainly has his  
8 mental acuity. And so the question is: Was there something  
9 otherwise particularly susceptible to criminal conduct?

10 Counsel has referred to the Blackhawk tickets evidence, I  
11 guess, for reasons I'm not sure why those fit here, but the  
12 whole Blackhawk tickets story was one that Dr. Ashbach  
13 volunteered to us, that this was something that we needed to  
14 know. And we didn't believe it, but we wanted to check it out,  
15 and we have checked it out. Counsel said we are trying to make  
16 him look like a liar. He brought it to us. We have a right to  
17 check out the veracity of the story he is telling, especially  
18 that kind of story.

19 Counsel also mentioned the settlement agreement which is  
20 referred to in Exhibit 15. Your Honor needs to know that, too,  
21 was proposed by David Ashbach, by his lawyer; and the person  
22 who proposed it happens to be seated -- you can ask Mr. Efron  
23 if you want any further indication. It was his idea. He  
24 drafted the settlement. He passed on that draft to our  
25 predecessor, Tom Kirsch, and I think it languished a little bit



1 while there was uncertainty on who was going to be involved.  
2 We picked it back up again, and by that time Mr. Efron had  
3 another lawyer working with him, Larry Hyman, not an  
4 inexperienced or naive lawyer by any measure, like Mr. Efron is  
5 not. And there was a lot of back and forth on it. That's what  
6 lawyers do.

7 So this was a settlement that was proposed by Dr. Ashbach  
8 expressly to try and resolve some of those issues. He did it  
9 with advice of counsel. It was not a rushed -- it took months  
10 and months to get this finalized. And so that's the answer to  
11 that one.

12 This whole question on, you know, call it outing  
13 Dr. Ashbach's private life, counsel yesterday or last week had  
14 indicated she pointed out to Ashbach that Jack's lawyer would  
15 use that against him. Jack's lawyer, again, at the time was  
16 Tom Kirsch. He seemed to have confused that with Mr. Gurland  
17 and said, You did what I heard you were going to do.

18 The sole purpose of that was to point out that there were  
19 lots of financial transactions. If he's supposed to be a  
20 financial illiterate and have a special phobia with respect to  
21 financial matters -- which, by the way, I wasn't particularly  
22 impressed with the scientific diagnosis or the medical  
23 diagnosis, it is just coming from the prosecutor, that was her  
24 diagnosis -- then I think it bears on the question -- the  
25 extent to which he does other things with his money. And he

1 had an entirely private life that he was certainly capable of  
2 making those expenditures in very large amounts.

3 Counsel mentioned at one point that in the register we  
4 introduced today there was only \$2,000, and then you look and  
5 you will find four or five mortgage companies involved. All of  
6 those are for people on his behalf Dr. Ashbach is paying.  
7 There were none of those for Mr. Weichman.

8 So to suggest that he's an economic illiterate or he has  
9 financial phobia, I don't think that's borne out by the record.  
10 He's been living this life, that aspect of it, for 30 years.  
11 And so the fact is, it was convenient for him to send and keep  
12 some of his business financial accounts with Mr. Weichman, and  
13 others he kept at home. But he made the decision where those  
14 accounts would be sent. And so I think that in no way has the  
15 government met the guideline standard for vulnerable victim,  
16 and we object to that.

17 **THE COURT:** Anything you want to say in response?

18 **MS. BERKOWITZ:** Nothing further, Your Honor.

19 **THE COURT:** All right. The objection is overruled.  
20 There's just -- I don't even think it's a close call, candidly.  
21 This is not a vulnerable victim case.

22 Under 3A1.1, a victim is considered to be a,  
23 quote-unquote, vulnerable victim, reading from Application Note  
24 2, it's somebody who is unusually vulnerable due to age,  
25 physical, or mental condition or who is otherwise particularly

1 susceptible to criminal conduct.

2 And then the background notes sort of flesh that out a  
3 little bit, and they give us some examples of who would fall  
4 into those categories of being a vulnerable victim. It goes on  
5 to say that, under Subsection B, it applies to offenses  
6 involving unusually vulnerable victims in which the defendant  
7 knows or should have known of the victim's unusual  
8 vulnerability.

9 And then here are the examples. It is things like  
10 marketing a cancer cure to somebody who is afflicted with  
11 cancer, or an armed robber particularly selecting a handicap  
12 victim in the perpetration of a robbery. That's somebody who  
13 is preying on an unusually vulnerable victim. This case isn't  
14 those cases at all.

15 It may be that Dr. Ashbach is unsophisticated when it  
16 comes to financial affairs, but it is not -- it doesn't equate  
17 to say that somebody who is unsophisticated is therefore  
18 vulnerable from a victim point of view. The way I see  
19 Dr. Ashbach is, it is not that he is a vulnerable victim, he is  
20 an uninterested person when it comes to financial affairs. So  
21 he's turned those -- the running of his financial affairs over  
22 to Mr. Weichman.

23 Now, Mr. Weichman is getting hit for an abuse of position  
24 of trust because he's breached a serious fiduciary duty  
25 vis-a-vis Dr. Ashbach. But to give him a vulnerable victim on

1 top of that would strike me as, in some ways, double-counting.

2 But in all events, Dr. Ashbach is a smart man. I've  
3 watched him testify over the course of two days. He's very  
4 smart. He's not at all aged in the sense of somebody who has  
5 limited or starting to lose their faculties. He is still  
6 practicing medicine. He was well aware of the ins and outs of  
7 what was going on in those accounts as it relates to his  
8 personal life. It is simply that as it relates to his  
9 professional life, he's not interested in that, and that's why  
10 he's hired Jack Weichman. And, of course, Jack Weichman is  
11 being punished for that by getting an abuse of a position of  
12 trust. So I just don't think it is even a close call that he  
13 is a vulnerable victim. He is not. So that objection is  
14 overruled.

15 All right. So the next issue is amount of the loss. I  
16 think that's sort of the only other issue that I have to  
17 resolve. And so, Ms. Berkowitz, I'll hear from you on that  
18 issue.

19 **MS. BERKOWITZ:** Well, Your Honor, there are a few  
20 components to that. Defense counsel have agreed that there's  
21 no dispute as to the 2.417 in loss as it relates to the wire  
22 fraud. So that being said, it is automatic then that the  
23 defendant, as a result of taking that money, then had taxes --  
24 you know, caused David Ashbach to pay taxes on the money that  
25 he, the defendant, got, not David Ashbach.

1           So those taxes that David Ashbach paid, which are  
2       identified in Visalli 28, over \$400,000, that money should then  
3       be added to the 2.4 million for the wire fraud, we believe.

4           **THE COURT:** What's that precise amount that you say  
5       that is?

6           **MS. BERKOWITZ:** If I could have a moment, Your Honor.  
7       That should be \$438,472.

8           **MR. BENNETT:** I'm sorry, counsel. I didn't -- could  
9       you repeat that.

10          **MS. BERKOWITZ:** 438,472.

11          Now, I guess the remaining issue -- there's a couple of  
12       other issues that go into calculating the loss amount, and one  
13       is the Centier Bank, Your Honor, the line of credit.

14          I think that it is pretty clear from the testimony of  
15       Dr. Ashbach, it is pretty clear from the evidence from Centier  
16       Bank, the grand jury testimony of Mr. Neuffer at Centier Bank,  
17       that David Ashbach was not aware of the line of credit.

18          And the evidence that defense counsel put into evidence  
19       today regarding this Fifth Third Bank account, which shows that  
20       there is money that is coming very close in time to the  
21       June 2006 -- I'm sorry, June 2002 line of credit that is first  
22       opened up in the name of David Ashbach for the express purpose  
23       of David Ashbach investing in Broadmoor, it just shows that  
24       that account never existed as a benefit to David Ashbach, that  
25       even as early as 2002, defendant was opening a line of credit,

1 taking Dr. Ashbach's money. We know that that money did not go  
2 to Broadmoor. And then, again, in 2006 and 2007, ultimately  
3 when the \$850,000 is -- that line of credit is totally  
4 exhausted that defendant uses to finance Jalapenos.

5 David Ashbach was not made aware of those loans prior --  
6 or that line of credit existing prior to the defendant taking  
7 out the line of credit, prior to him exhausting the line of  
8 credit. So I believe that the \$850,000 should be added back  
9 into the -- should be added into the calculation of defendant's  
10 advisory guideline range.

11 As far as restitution, defendants have represented that  
12 there have been payments --

13 **THE COURT:** Let's just talk about loss amount now.

14 **MS. BERKOWITZ:** Okay. So the 850 should be part of  
15 that, as should the Fifth Third --

16 **THE COURT:** You have to get the amount over 7 million  
17 to get to the next guideline range. So can you just take me  
18 through how you are doing that?

19 **MS. BERKOWITZ:** The relevant -- okay. Well --

20 **THE COURT:** I mean, you would agree with that, right?

21 **MS. BERKOWITZ:** Right, I would agree with that.

22 **THE COURT:** The range is between 2.5, and the next  
23 one is 7 million.

24 **MS. BERKOWITZ:** Right.

25 **THE COURT:** So if you don't get it over 7 million

1 then we're in that range that the presentence report reflects,  
2 correct?

3 **MS. BERKOWITZ:** Correct. In government's sentencing  
4 exhibit on page 27 we identify those loss amounts and what they  
5 should be. So we've got for Dr. Eriksen, that's \$750,000. For  
6 Dr. Ashbach, we identify \$3,177,427. That is the -- that would  
7 be lower because the --

8 **THE COURT:** Yeah, I thought it was for --

9 **MS. BERKOWITZ:** Tax, right.

10 **THE COURT:** Right. And by the way, this is what  
11 makes the difference, this tax -- the loss that led to the tax  
12 liability for Dr. Ashbach.

13 **MS. BERKOWITZ:** Right.

14 **THE COURT:** Without that, it is under 7 million.  
15 With that, it is over 7 million, is that right?

16 **MS. BERKOWITZ:** Your Honor, no, I would have to  
17 calculate that. I'm not sure.

18 **THE COURT:** All right.

19 **MS. BERKOWITZ:** I'm not sure.

20 **THE COURT:** Can we just go through this. If I agree  
21 with you on the Centier loan, and I tend to agree with you on  
22 it, you have 850,000 --

23 **MS. BERKOWITZ:** Correct.

24 **THE COURT:** -- for loss amount.

25 **MS. BERKOWITZ:** Right.

1           **MR. GURLAND:** Your Honor, could I just say one thing  
2 about that?

3           **THE COURT:** Yes.

4           **MR. GURLAND:** This Centier loan, a lot of that was  
5 paid back with interest before this investigation came up. I  
6 know the current amount is \$460,000, so I don't believe he  
7 would get hit with the entire amount, even if Your Honor ruled  
8 --

9           **THE COURT:** But that's confusing restitution with  
10 loss amount.

11           **MS. BERKOWITZ:** Intended loss.

12           **THE COURT:** What we're trying to do is figure out  
13 where does he fall under the loss table under 2B, so I'm going  
14 to hear from you completely. I'm just looking at it from the  
15 government's perspective right now. We have 850,000 on the  
16 Centier loan, correct, Ms. Berkowitz?

17           **MS. BERKOWITZ:** I'm sorry. I'm sorry. I didn't hear  
18 the question. I apologize, Your Honor.

19           **THE COURT:** We have 850,000 that he got these lines  
20 of credit without Dr. Ashbach knowing about it?

21           **MS. BERKOWITZ:** Right.

22           **THE COURT:** We have 2.4 million that's stolen from  
23 the LPL accounts?

24           **MS. BERKOWITZ:** Right.

25           **THE COURT:** We have 750,000 that's stolen from



1 Dr. Eriksen, correct?

2 MS. BERKOWITZ: Correct.

3 THE COURT: We have 352,000 in the Fifth Third fraud?

4 MS. BERKOWITZ: Right.

5 THE COURT: And we have 2.2 million in the bankruptcy  
6 fraud?

7 MS. BERKOWITZ: Correct.

8 THE COURT: So that comes up to about 6.5 million.

9 MS. BERKOWITZ: Right. Then you add in the taxes  
10 that the defendant dumped on --

11 THE COURT: That's my point. That's -- they -- other  
12 than the 850,000, and I'm going to hear from you on that, they  
13 agree with everything else that I have just said. So it really  
14 comes down to whether the loss should include the tax liability  
15 that Dr. Ashbach sustained as a result of the LPL account being  
16 liquidated.

17 MS. BERKOWITZ: LPL, Stifel Nicolaus, Centier Bank.  
18 Your Honor, I did not understand that counsel was agreeing with  
19 how we are calculating the bankruptcy loss, so -- I thought  
20 that there was some dispute. Am I incorrect on that?

21 THE COURT: I thought that you guys conceded that  
22 point on Thursday.

23 MR. BENNETT: I think we did, Your Honor.

24 MS. BERKOWITZ: Okay. I was not aware.

25 THE COURT: I'm going to go back to what we talked

1 about when we started the hearing.

2 You guys had this presentence report going all the way  
3 back to July of last year. It is not until the week before  
4 sentencing that you file a 29-page sentencing memorandum and  
5 come up with this other theory of loss that triggers it into  
6 the next category under the guidelines. And I'm going to find  
7 that's waived as it relates to that 400,000 some-odd dollars.  
8 I just don't think that that is the way that we should be  
9 approaching sentencing, especially in a case which, as you  
10 said, has been in the system for four years.

11 This presentence report has been in all of your hands,  
12 certainly your hands, not necessarily in these gentlemen  
13 because they are new to the case, since July of 2017. And for  
14 a week prior to sentencing, for the government to come in to  
15 try to add to the loss figure when they've had this evidence --  
16 they've had this presentence report, I just don't think that's  
17 the way we should be doing business.

18 Do you want to respond to anything, Mr. Gurland?

19 **MR. GURLAND:** No, Your Honor.

20 **THE COURT:** Okay. So I'm going to find that the loss  
21 amount in this case is between 2.5 and \$7 million. So it is an  
22 18-level enhancement under the 2012 guidelines.

23 So the guidelines in this case, as I see it, are as  
24 follows: There is an initial offense level in this case of  
25 seven, and that is pursuant to 2B1.1(a). Eighteen points are

1 added pursuant to 2B1.1(b)(1)(J).

2 And by the way, everybody is in agreement we are using the  
3 2012 guidelines in this case because they are more favorable to  
4 the defendant than the present guidelines.

5 Two additional points are added because under  
6 2B1.1(b)(9)(B) this fraud involved a bankruptcy fraud  
7 component, so there's a two-level enhancement for that.

8 There's an additional two-level enhancement under  
9 2B1.1(b)(10)(C) because the parties are in agreement, by virtue  
10 of the withdrawal of the objection from the defendant, that  
11 sophisticated means were used in the commission of this  
12 offense.

13 Two additional points were added because, as I referenced  
14 earlier, the defendant did abuse a position of trust, and so by  
15 virtue of 3B1.3, there's a two-level enhancement.

16 An additional two-level enhancement is applicable because  
17 the defendant is deemed to have been an organizer or leader of  
18 the criminal activity under 3B1.1(c).

19 So for the first group of offenses here, that leads to an  
20 adjusted offense level of 33. The second group of offenses  
21 here, it's just one count, is the false tax returns count. Do  
22 you all want to be heard on the loss amount as it relates to --

23 **MR. GURLAND:** Your Honor, I don't think there's any  
24 need to. Given the ruling on the waiver, we're in the same  
25 area.

1           **THE COURT:** Okay. And I will hear from you as it  
2 relates to restitution because that's a different kettle of  
3 fish here, so for the tax offense, we start at an offense level  
4 of 22; that's pursuant to 2T1.1, and then the cross-reference  
5 to 2T4.1, which is the tax table.

6           And there is a two-level enhancement under 2T1.1(b)(1)  
7 because the defendant failed to correctly identify the source  
8 of income exceeding \$10,000 from criminal activity.

9           Two additional points were added, again, for abuse of  
10 position of trust as it relates to this grouping of offenses.  
11 For a total offense level of 26.

12           So you have to then do the multiple-count adjustment under  
13 3D1.4 of the guidelines. So we have one group that is a 33,  
14 which yields one unit. Then we have a second group that has an  
15 adjusted offense level of 26 that yields .5 units. And so that  
16 gives a total number of units of 1.5. And, again, under 3D1.4,  
17 you then add one additional offense level through that  
18 multiple-count adjustment. So you have a combined adjusted  
19 offense level of 34, and from that, there is a three-level  
20 reduction for acceptance of responsibility, leaving a total  
21 offense level of 29. The criminal history category is I.

22           So that leads to a range of suggested incarceration under  
23 the guidelines of 108 months to 135 months. But, of course,  
24 there's a plea agreement in this case that caps it at 120  
25 months, but the guidelines are 108 to 135.

1           The fine range in this case is -- let me get there. The  
2 fine range is 15,000 to \$1 million on all the counts -- or at  
3 least on Counts 1 and 2. The supervised release range is two  
4 to five years on Count 1, two to five years on Count 9, one to  
5 three years on Count 21, one to three years on Count 28, and  
6 one year on Count 34.

7           So is all of that accurate, based on the rulings that I  
8 have made, Ms. Berkowitz?

9           **MS. BERKOWITZ:** Yes, Your Honor.

10          **THE COURT:** Mr. Gurland or Mr. Bennett?

11          **MR. GURLAND:** Yes, Judge.

12          **THE COURT:** Let's talk about restitution. Who is  
13 going to address that?

14          **MR. BENNETT:** I will, Your Honor.

15          **THE COURT:** Mr. Bennett.

16          **MR. BENNETT:** Your Honor, we introduced quite a bit  
17 of evidence on -- designed to show that Dr. Ashbach was aware  
18 of the existence of the loan. There were UCC filings, et  
19 cetera. I think I can go to the bottom line, and that is that  
20 restitution has been made over a ten-year period, and the  
21 existing balance on this is \$466,200, as of April of this year.

22          **THE COURT:** Okay.

23          **MR. BENNETT:** So our position would be that that  
24 should be the amount of restitution.

25          **THE COURT:** That's on the 850,000 Centier fraud?

1           **MR. BENNETT:** Correct. Correct, yes.

2           **THE COURT:** Do you take issue with that,  
3           Ms. Berkowitz, or is that correct?

4           **MS. BERKOWITZ:** No, Your Honor, I don't.

5           **THE COURT:** So in addition to that, what is the exact  
6           amount of restitution on the LPL theft from the retirement  
7           accounts? I've been saying roughly 2.4 million, but I know  
8           there's an exact number. Ms. Berkowitz, can you help me out  
9           with that?

10          **MS. BERKOWITZ:** I believe it is \$2,417,000,  
11          Your Honor.

12          **THE COURT:** Okay. Mr. Bennett, do you object to  
13          that?

14          **MR. BENNETT:** No, Your Honor.

15          **THE COURT:** Or do you agree with that?

16          **MR. BENNETT:** We, I think, specified that. I do want  
17          to backpedal on the 466. We contend that is covered by the  
18          settlement agreement with Mr. Efron.

19          **THE COURT:** Okay. We can talk about that, but  
20          that --

21          **MR. BENNETT:** Okay.

22          **THE COURT:** And we'll go back -- I just want to get  
23          what's not in dispute at this point, and then we can talk about  
24          what's in dispute.

25          So does everybody agree that the Fifth Third restitution,

1 the number I have is \$209,136.31. That's what's left on the  
2 Fifth Third loan.

3 Ms. Berkowitz, do you agree with that?

4 **MS. BERKOWITZ:** Yes. Correct, Your Honor.

5 **THE COURT:** Okay. So do you agree with that,  
6 Mr. Bennett?

7 **MR. BENNETT:** Yes, Your Honor.

8 **THE COURT:** Okay. We have taken care of Ashbach. We  
9 have taken care of the Centier amount, although there's this  
10 issue about this recent agreement that we'll talk about, the  
11 Fifth Third. And then Dr. Eriksen, I believe it is 750,000.  
12 Does everybody agree with that?

13 Ms. Berkowitz?

14 **MS. BERKOWITZ:** Apparently, Your Honor, counsel gave  
15 Dr. Eriksen a \$119,000 check, so that would be --

16 **THE COURT:** Has she negotiated that; do we know?

17 **MS. BERKOWITZ:** I don't know.

18 **MR. BENNETT:** Not to my knowledge. I'll try and find  
19 that out.

20 **THE COURT:** So you gave her 119?

21 **MR. BENNETT:** 119. And our understanding is the  
22 government seized approximately 188 or 190,000 that is  
23 available for further --

24 **THE COURT:** I'm just going to order 750,000. The FLU  
25 unit will sort out -- that's the financial litigation unit --

1 will sort out what amount of money has been paid from --

2 **MR. BENNETT:** Does Your Honor -- should we be paying  
3 into a different account or something or pay --

4 **THE COURT:** No. At the conclusion of the sentencing,  
5 you know, Mr. Szewciw is here, who is sort of a civil guru here  
6 down in the U.S. Attorney's Office, but I'm sure he'll be able  
7 to help you in how the monies can actually get paid so that  
8 they get directed to the correct victim.

9 Is that right, Mr. Szewciw? You will be able to do that?

10 **MR. SZEWCIW:** Yes.

11 **THE COURT:** From my way of thinking, that covers the  
12 totality of the restitution, is that right?

13 **MS. BERKOWITZ:** No, Your Honor. We have the  
14 bankruptcy creditors.

15 **THE COURT:** Oh, okay. That's right. So talk to me  
16 about that. What have I heard that gives me the specific  
17 amount of that restitution?

18 **MS. BERKOWITZ:** Your Honor, because of the nature of  
19 the charge, we are limited only to what is identified as being  
20 the assets actually being hidden in Count 21. So we go  
21 through -- we have identified about \$285,995.64 worth of assets  
22 that were hidden in the January 2011 cash flow report.

23 **THE COURT:** Can you give me that number again? I'm  
24 sorry, 285 what?

25 **MS. BERKOWITZ:** 285,995.64.



1           **THE COURT:** Do you guys disagree with that  
2           restitution as it relates to that count? Because they are  
3           limited to the count of conviction for that.

4           **MR. BENNETT:** We don't object to that figure,  
5           Your Honor.

6           **THE COURT:** Okay. So let's talk about what effect  
7           this recent agreement has on restitution for the Dr. Ashbach  
8           fraud. I'll characterize it that way.

9           **MS. BERKOWITZ:** Government to start?

10          **THE COURT:** Either side. Yes, you can start,  
11          Ms. Berkowitz.

12          **MS. BERKOWITZ:** Your Honor, to be honest, no effect,  
13          because there's the Mandatory Victim Restitution Act that the  
14          wire fraud falls under, so the Court is obligated to order  
15          restitution. There's been a determination, the defendant has  
16          admitted that there's this fraud, and so -- and he is entitled  
17          to that restitution and a court order of that restitution.

18          There is no -- there has been no payment on it. The only  
19          payment that has been made on anything relates to the Centier  
20          loan. So to the extent that there's any payment that ever does  
21          get made on that by the defendant, then that will be credited  
22          against that restitution order.

23          **THE COURT:** Mr. Bennett.

24          **MR. BENNETT:** Just that the settlement agreement was  
25          designed to try and address this, and we have -- we have

1 transferred shares consistent with the agreement from  
2 Jack Weichman Ventures to Dr. Ashbach. It is a legitimate  
3 agreement. It was reached with counsel. It is enforceable.

4 There's an asset -- one of the things Ms. Berkowitz said  
5 this morning was that the restaurant hadn't earned any money  
6 over about a three-year period, but she didn't cover the recent  
7 years. The restaurant is positive cash flowing now and has  
8 been since 2015. So it is an ongoing concern that will be --  
9 will have cash available for this purpose.

10 **THE COURT:** So I guess I don't understand how I'm  
11 going to arrive at some amount. And I don't see what that has  
12 to do with the mandatory restitution. I mean, what does one  
13 have to do with the other? I'm not following.

14 **MR. SZEWCIW:** If I may, Your Honor.

15 **THE COURT:** Sure, Mr. Szewciw.

16 **MR. SZEWCIW:** Your Honor, it has nothing to do with  
17 it. It is just an agreement to repay some money, and the issue  
18 is how much do they have to repay, and that's going to be the  
19 restitution order. So their agreement simply covers a very  
20 small portion of what they have already agreed to repay.

21 **THE COURT:** Fair enough. But let me ask you this:  
22 Let's say this restaurant does kick off, I don't know, four  
23 grand a month for Dr. Ashbach. Will that, then, through the  
24 FLU unit, be deducted off of the restitution?

25 **MR. SZEWCIW:** It will be deducted only if they, in

1 fact, pay the restitution, and there's no mechanism to  
2 determine under the terms of that agreement how much they are  
3 going to be paying, if at all. And there's no way for  
4 Dr. Ashbach to even force any payment. He is a minority  
5 shareholder owning 25 percent.

6 **THE COURT:** I understand that. You are pushing  
7 against an open door here. I agree with you. But what -- I  
8 think what they want is if he does get paid, he wants -- they  
9 want credit for those payments.

10 **MR. SZEWCIW:** They will, Your Honor, because any  
11 payment will be made to the clerk of the court. We are then  
12 aware of it, and we reduce the restitution amount. So any  
13 payment coming from Woodhalapenos or JAW or anybody else, or  
14 payable to Dr. Ashbach, we're going to keep track of it, and  
15 then we will subtract that from the total amount of the  
16 restitution.

17 **THE COURT:** Mr. Bennett, does that sort of address  
18 your concern?

19 **MR. BENNETT:** Yes, Your Honor.

20 **THE COURT:** Okay.

21 **MR. BENNETT:** I'm not familiar with the mechanics of  
22 it. That's why I'm a little hesitant.

23 **THE COURT:** Yeah, I'm a little -- I understand what  
24 he's saying though. Is it your preference, then, that to the  
25 extent he gets distributions from -- he being Dr. Ashbach -- to

1 the extent he gets distributions from this -- what is it,  
2 Woodhalapenos --

3 **MR. BENNETT:** Yes.

4 **THE COURT:** -- that those would best be paid directly  
5 to the FLU unit so they can be tracked, and then they'll be  
6 filtered to the doctor?

7 **MR. SZEWCIW:** Your Honor, that's a complication only  
8 because you have multiple victims in this case, and nothing  
9 prevents any particular victim from dealing separately with the  
10 individuals or entities who owe them the money. So once it is  
11 paid into the clerk of the court, of course, the money would be  
12 distributed pro rata among the victims.

13 If Dr. Ashbach receives separate payment by virtue of an  
14 agreement, we would then track that amount of restitution. If  
15 they would let us know what that amount was, we would simply  
16 reduce it. But again, it doesn't affect the imposition of  
17 restitution.

18 **THE COURT:** I understand. I'm just trying to speak  
19 pragmatically how will this work.

20 **MR. SZEWCIW:** Pragmatically, any money they pay  
21 Dr. Ashbach under this agreement should be paid to him, not to  
22 the court.

23 **THE COURT:** Okay. And they'll get credit.

24 **MR. SZEWCIW:** Yes.

25 **THE COURT:** Through the FLU unit.

1           **MR. SZEWCIW:** Yes, if they let us know about it.

2           **THE COURT:** Of course.

3           **MR. GURLAND:** Your Honor, there's one other issue.  
4 Doctor had two things he got: His interest in the restaurant  
5 and the profits that it is generating by his percentage. He  
6 also got -- he now owns a quarter percent of the land 'cause  
7 there were two separate stock transfers. The land has a value,  
8 which is significant, which would cover a significant portion  
9 of the restitution as well.

10           **THE COURT:** But how do I know what that is? It is  
11 not going to affect -- I'm ordering the restitution. This is  
12 really an effort in deciding how it is going to be collected  
13 going forward.

14           If he now owns -- if the land is worth a million dollars  
15 and he now owns 25-percent interest in that restaurant, then  
16 the 250,000, from my way of thinking, will be deducted off the  
17 restitution that he has due and owing to him.

18           **MR. SZEWCIW:** Yes. If he owns a quarter of --

19           **THE COURT:** Of the restaurant. I'm just saying  
20 hypothetically.

21           **MR. SZEWCIW:** Of the land.

22           **MR. BENNETT:** Of the land. There's the operating  
23 entity that he owns 25 percent of, and then there's the entity  
24 that actually owns the restaurant, the building, the land.

25           **MR. SZEWCIW:** That's only if it is liquidated,

1 Your Honor. There is no way for him to practically liquidate  
2 the land on which the restaurant sits.

3 **THE COURT:** That's just a matter for you all to work  
4 out through the civil collection process that the FLU unit does  
5 as a matter of course, as I see it.

6 All right. So let me make the restitution findings. They  
7 are as follows: On the Centier Bank -- so Dr. Ashbach is owed  
8 466,200, is that correct?

9 **MS. BERKOWITZ:** No. 477,687.

10 **THE COURT:** He gave me a different number. I'm just  
11 using the number he gave me that you said you didn't object to.

12 **MS. BERKOWITZ:** Oh, I'm sorry. This is the number I  
13 had from documents from defense counsel. I'm not sure what  
14 that's based on.

15 **MR. BENNETT:** I think there may have been an  
16 additional since then.

17 **MS. BERKOWITZ:** I'm not aware of it.

18 **MR. BENNETT:** Our amount is \$466,200.

19 **THE COURT:** Okay. That's what I'm ordering. 466,200  
20 to Dr. Ashbach as it relates to the Centier Bank fraud.

21 2,417,000 to Dr. Ashbach as it relates to the theft from  
22 his retirement account at LPL Financial.

23 Fifth Third Bank is entitled to restitution, and it will  
24 be ordered in the amount of \$209,136.31.

25 Dr. Brenda Eriksen will be ordered to receive restitution

1 in the amount of 750,000.

2 The bankruptcy creditors will be due \$285,995.64, to be  
3 paid in a pro rata basis based upon the amount of their claim  
4 on the bankruptcy estate.

5 So that's the restitution amounts and to whom they are  
6 ordered to be paid.

7 Based on the rulings that I have made, is that accurate,  
8 Ms. Berkowitz?

9 **MS. BERKOWITZ:** Yes, Your Honor.

10 **THE COURT:** Mr. Bennett?

11 **MR. BENNETT:** Yes, Your Honor.

12 **THE COURT:** I do now accept the plea agreement  
13 entered into between the United States and the defendant that  
14 was filed with this Court back in October of -- I believe it  
15 was October of 2016. And the judgment and sentence will be  
16 consistent with it because I am satisfied that the agreement  
17 adequately reflects the seriousness of the actual offense  
18 behavior and that accepting the plea agreement will not  
19 undermine the statutory purposes of sentencing.

20 We're done with sort of the guideline analysis, and now  
21 we're going to transition to 3553. Am I going to hear any  
22 additional evidence, or is it just going to be by way of  
23 argument and proffer to the Court, in addition to what I have  
24 already heard?

25 Ms. Berkowitz?

1           **MS. BERKOWITZ:** No additional evidence, Your Honor.

2           **THE COURT:** Mr. Bennett, how about from your point of  
3 view?

4           **MR. BENNETT:** No, Your Honor.

5           **THE COURT:** All right. So, Mr. Bennett, as the  
6 lawyer for the defendant, is there anything that you wish to  
7 say on his behalf before I sentence the defendant?

8           **MR. BENNETT:** Yes, Your Honor, I would.

9           As Your Honor knows, Mr. Gurland and I are pretty new to  
10 this case. Neither of us were involved when it began several  
11 years ago. It has not been the kind of case I thought I was  
12 getting when I became involved. I thought it would be a simple  
13 matter of the sentencing only. But there really hasn't been  
14 anything simple about this.

15           The plea agreement was reached long ago, as Your Honor  
16 just indicated, but there is a substantial chasm between how we  
17 view Jack Weichman and how the government does. I'm sure you  
18 get that in many cases. We think the case is overcharged,  
19 frankly; that some of what we've seen seems designed to sort of  
20 maximize penalties. And so I just wanted to comment on that.

21           We're not trying to be provocative in our sentencing memo.  
22 We were asking for very lenient treatment for Mr. Weichman, and  
23 the reason is that we have come to know him, and Your Honor has  
24 seen all of the letters that came in.

25           As we had said in our brief, he is an enigma. On the one



1 hand, he has been involved in a lot of conduct for which he has  
2 been convicted, and he is appearing today; but as we were  
3 preparing for this hearing some time ago, we were discussing  
4 some of the positions the government has staked out. He sort  
5 of, in a bewildered voice, said, I'm not that bad. We think  
6 that's right.

7 This is a generous man with a very big heart. He has  
8 helped many people in his life. Again, you have seen the  
9 accounts of that in the letters, and I will very briefly touch  
10 on a couple of them. And to be sure, he has his flaws. He's  
11 made mistakes. He's accepted responsibility for that.

12 When Mr. Weichman encountered problems in his life, he  
13 screwed up. He took the wrong path. He tried to  
14 self-medicate, if you will, through his gambling. Even as we  
15 are here today, I'm not -- that's not a clinical diagnosis,  
16 that's just our suspicion, based on the reading we have done on  
17 it and that kind of thing. But he was, frankly, too proud to  
18 submit to something that might have been useful to Your Honor.  
19 But I think anybody who, as the IRS calculated, goes into  
20 casinos and they spend eight-plus million and they take out  
21 six million has a problem. And so he's trying to make amends.

22 Many people have commented on -- many of the business  
23 colleagues that -- and clients that he's dealt with commented  
24 on how he regularly works late into the evenings and early  
25 morning trying to take care of his clients. It was

1 Jack Weichman who instilled in his children the importance of  
2 compassion and helping others, and you'll recall from the  
3 correspondence about their dad organizing Toys for Tots drives  
4 and that kind of thing, and to basically be a go-to guy in the  
5 community, to always contribute to homeless shelters and  
6 battered women shelters, that kind of thing. He bought a bus  
7 for a battered women's shelter.

8 But there's no differentiation among the people that he  
9 helps. He will help well-off business colleagues; he helps  
10 their employees. He bought a refrigerator for a single mom who  
11 was having trouble in her life. He replaced the gear of a  
12 little league baseball team that had had it stolen. He  
13 rendered his services free of charge to an employee of a client  
14 who was going through a divorce and was broke. So there's that  
15 aspect.

16 And Jack Weichman has always made those sorts of  
17 contributions anonymously; but as often happens, people who are  
18 grateful and the recipients of that refuse to keep that kind of  
19 thing secret. That's the only reason we know about those.

20 As the Court knows, Jack moved his elderly mother into his  
21 home about 16 years ago when her health was deteriorating. It  
22 has continued to deteriorate. You heard the -- some references  
23 to that, and you saw Dr. Ashbach's reference to treating her.  
24 She's 97 years old. We don't know how long she's got, but  
25 certainly she is -- she takes a lot of time for Mr. Weichman to

1 care for her.

2 I don't know how many people we know who would, you know,  
3 submit themselves to caring for somebody under that  
4 circumstance for very long. I think it would just be too  
5 difficult for the vast majority of people to do. So I would  
6 say Jack Weichman isn't simply -- you know not a bad man. He  
7 is a good man in many respects. And we're asking the Court to  
8 sort of take a full measure of him in imposing sentencing.

9 Your Honor, I'm sure read in our memo a little bit about  
10 his personal history, his family history. His parents were  
11 both survivors of World War II. His mother was imprisoned at  
12 Auschwitz. She's still got the tattoos on her arm. Only  
13 people who went to that camp were branded with numbers.

14 What I didn't know, because Jack didn't mention it when we  
15 were drafting the memo, was that his father was also a  
16 concentration camp survivor. He had originally served in the  
17 Polish army and was captured and was put in a prison camp as  
18 well, weighed about 80 pounds when he got out, like you've seen  
19 in various movies and that kind of thing. But both of his  
20 parents obviously survived.

21 They met after the war. They were both from Kraków, so  
22 they were from the same city, but they only met after the war.  
23 They in short order got married, made their way to Israel with  
24 a few stops in between, and Jack was born there. His older  
25 brother was born there as well.

1 Jack was born in 1951. In 1959, his parents moved to East  
2 Chicago, and within a very short time, Jack's father was able  
3 to borrow the money to purchase a grocery store. He worked  
4 there at that store for the rest of his life, from about 1961  
5 until the end of his life.

6 The Weichmans kept that store open 363 days a year, all  
7 except for two Jewish High Holidays, Holy Days. And that gets  
8 to the point -- Jack started working at the family store when  
9 he was 10 years old and thereafter worked seven days a week, at  
10 least part of every day, for those 363 days a year, beginning  
11 at age 10, helping out his father. The business wasn't  
12 successful enough in the early years at least to even hire any  
13 other employees, so you had a very young Jack Weichman who was  
14 involved in those activities and learned a very pronounced work  
15 ethic, had to work hard from a very early age.

16 Jack continued to work for his father's store until he  
17 began attending college at IU Northwest. He graduated from  
18 there in 1975, went to a Chicago accounting firm while he  
19 studied for the CPA exam. He passed CPA exams. He was one of  
20 very few to do it in Illinois that year, 4 percent, on his  
21 first sitting, also passed Indiana, and he began working for  
22 Gumbiner & Associates, where he met Dr. David Ashbach.

23 Within a couple of years, he opened his own practice, his  
24 CPA practice in Munster, Weichman and Associates. He  
25 specialized in doctor groups, physician practice groups. And

1 as Your Honor surely noted, there were a number of letters from  
2 clients. The biggest majority of letters on his behalf came  
3 from physicians that he had represented over the years, all  
4 talking about how -- what a good job he had done for them and  
5 what a wonderful service he provided.

6 In 1987, he started a second business, Medical Management  
7 and Data Services, or MMDS. Again, his first client was  
8 Dr. Ashbach. I won't repeat all of the discussion in our memo,  
9 Your Honor, but he seemed to have developed a special skill at  
10 helping new physicians, people who were just going out starting  
11 their practices or maybe transitioning from another to their  
12 own business and was very good helping them establish their  
13 practice and handling sort of the business side of it.

14 Ms. Berkowitz had written that Weichman developed an  
15 almost mythic reputation with his physician clients as a  
16 financial guru. And to be sure, his physician clients do hold  
17 him in very high regard.

18 Her characterization of him as a financial guru is a bit  
19 of a misstatement, however. It mischaracterizes the services  
20 he actually performed for them. And so he was not -- as we  
21 said, he was not a stockbroker or an investment counselor,  
22 portfolio manager or any of that kind of thing. He provided  
23 business counseling, negotiating contracts with hospitals and  
24 other practice groups, buying office equipment, leasing, hiring  
25 people, all of those sort of mechanical aspects of the

1 practice.

2 We've heard a lot about the DaVita transaction. That was  
3 just one example of the sort of wise business counsel  
4 Jack Weichman has provided his clients over the years.

5 I want to take a moment now and talk about Dr. Ashbach.  
6 Your Honor has heard his testimony over a two-day period. As  
7 by his own characterization, he and Jack Weichman had been best  
8 friends for almost 40 years. David was a long-time personal  
9 physician to both of Jack's parents, remains physician to his  
10 mother. Their families have been close. They were surrogate  
11 uncles to each other's families, to each other's children.  
12 Your Honor will recall what was recounted in the letters of  
13 Jennifer McGuire and Linda Einterz. David Ashbach was often  
14 heard to say things like, you know, Jack's family, he is closer  
15 than his brother, closer than his own brother. He feels he  
16 could never repay Jack for all he had done. What's mine is  
17 Jack's and that kind of thing.

18 Your Honor, I would also encourage you to look at the  
19 deposition transcript from the deposition -- civil deposition  
20 in 2005. I think it is Exhibit 14 -- it is actually  
21 Exhibit 17. And he was asked whether Mr. Weichman had the  
22 authority to move money in and out of your account as he  
23 wishes, and he said he does.

24 Dr. Ashbach testified that he essentially had carte  
25 blanche, and that's important. This was 2005. It was a long

1 time ago. He has made similar statements like that many, many  
2 times over the years. That statement was under oath in a  
3 deposition.

4 And it kind of gets to the heart of what we're saying  
5 about Jack Weichman's conduct because he's admitted what he has  
6 done, he has admitted what his conduct amounted to; but his  
7 point has been that he thought he had permission or authority  
8 to do that, in large part. And Dr. Weichman, over the years,  
9 has seemed to say the same thing to many, many people.

10 We have already talked, I think, about the manner in which  
11 he kept multiple bank accounts and the reasons they did that.  
12 I don't think we need to revisit that.

13 There was an episode that Dr. Ashbach talked about and  
14 that was where he was sort of getting pushed out of the  
15 practice group he was in, I think it was Nephrology  
16 Specialists, and had essentially been prepared to accept a  
17 buyout of forgiveness of about \$150,000 in debt; and at some  
18 point he asked Jack Weichman to give him -- to look over the  
19 circumstance and look at the operating agreement and that sort  
20 of thing. And as he testified, he came to the conclusion,  
21 through Jack's counsel, that he was actually owed something  
22 along the neighborhood of three to \$4 million, which he  
23 wouldn't have even pursued without his counsel.

24 The government asked if he feels beholden to Jack because  
25 of that. Of course, the money hasn't come in yet, but it is

1 certainly moving that direction. It looks like the former  
2 colleagues recognize that he's owed a little bit more than they  
3 had been offering. But that's simply another example of the  
4 good business counsel that he routinely gave to clients,  
5 including David Ashbach.

6 I'm sorry I'm skipping around here, Your Honor. We've  
7 covered some of this already, so I'm trying not to take more  
8 time than --

9 **THE COURT:** Take your time.

10 **MR. BENNETT:** Again, Jack Weichman has admitted to  
11 using his money largely to finance -- a lot of it to finance  
12 his gambling. He didn't deny that he had done so or that he  
13 had lost significant sums of the money, and so we didn't object  
14 to that aspect of it. But we think that the record should  
15 reflect that, you know, based on his relationship with  
16 David Ashbach, that he was authorized to do so.

17 I think, in sum, Your Honor, this gets back to  
18 Jack Weichman indicating, I'm not that bad. We don't think he  
19 is that bad. He is somebody who has done an awful lot of good.  
20 There's a dimension to him that you haven't heard a lot about  
21 in the couple of days that we have been here. I hope that you  
22 have been able to get that flavor from our sentencing  
23 memorandum.

24 But we know that we are asking a lot, for a lenient  
25 treatment. We know what the guideline exposure is, but we ask



1 that Your Honor consider a significant departure given the  
2 circumstances. It is noteworthy that the victims of  
3 Dr. Eriksen and Dr. Ashbach have said they don't -- they don't  
4 want to see him incarcerated, and they have forgiven him. And  
5 so I think that if he's in a position where he can remain  
6 employed, you know, he can get them paid back much faster.

7 **THE COURT:** Thank you, Mr. Bennett.

8 All right. Mr. Weichman, is there anything you wish to  
9 say on your own behalf or present anything else to me in  
10 mitigation of punishment? Anything you would like to say, sir?

11 **THE DEFENDANT:** Thank you, Your Honor.

12 You know, I have taken a lot of time to reflect and  
13 introspect, and I fully accept responsibility for my actions.

14 You know, I deeply and painfully regret my wrongdoings and  
15 the pain that I have caused people, but it is not who I am.  
16 I've truly internalized my feeling of guilt, shame and remorse  
17 and would like the opportunity to make amends.

18 I apologize for my misuse of funds from my friends and  
19 colleagues. Again, it is not who I am supposed to be as a  
20 trusted advisor, a confidante to many people for over 40 years.

21 I didn't set out to hurt any -- or abuse anybody, but  
22 that's what I ended up doing. You know, I was raised by my  
23 mother and father to always be a good person, a righteous  
24 person, charitable, help everyone without any material rewards  
25 or acknowledgment or anything. You know, it was my duty, as

1 far as they taught me, to be a good human being, to help  
2 others, even if it was to my detriment, which most people who  
3 know me know that that's what I do. I will take the risk for  
4 them.

5 You know, my gambling was basically an irrational,  
6 ill-advised compulsion and embarrassment that was hidden from  
7 my friends and colleagues, and I subsequently ended up abusing  
8 their trust. For that, I ask forgiveness and to be allowed to  
9 atone and make amends. I knew it was wrong. I couldn't stop  
10 at the time.

11 There were traumatic stresses in my life, and mental and  
12 will and health was at a low point, ended up, because of my mom  
13 with a ruptured disk, a hernia surgery, bouts of gout, David  
14 and I -- or Ashbach and I got sued together, the Chapter 11 is  
15 filed. All of it came in, like, a two, three-year period. So  
16 that situation, plus with what I did, created a domino effect  
17 of ill-advised actions.

18 And I'm especially sorry for the pain I inflicted to David  
19 and Brenda. They were my devoted friends and supporters. I  
20 fought for them. I would take the risk to fight for them, no  
21 matter what it was.

22 I'm sorry to my family and my mother, you know, who has  
23 suffered enough through her life, her concentration camp, the  
24 wars, angel of death looming, and whose life depends on me  
25 because she has nobody else to take care of her. I apologize

1 to my son who got caught up in this mess that I created, but I  
2 love him dearly. And my long-time friend and long-time  
3 colleague, Jim Schaefer, and many other associates and friends.

4 You know, I'm extremely proud of what -- the suffering and  
5 perseverance of my parents, again, concentration victims who  
6 worked so hard to give me a fresh life, raised me better and  
7 deserve better from their son. I know I failed to follow the  
8 values that they instilled in me, and for that, I'm profoundly  
9 sorry.

10 You know, while I love my dear friend and brother David,  
11 who has shown me a big heart and at this time is forgiving me  
12 and sticking with me, I haven't forgiven myself for what's  
13 transpired.

14 Basically, in conclusion, I feel deep empathy for the ones  
15 I have wronged. I have learned a tremendous lesson from this  
16 process. I will never allow myself to be in a situation again  
17 that I created and ended up unintentionally hurting many  
18 people.

19 I'm extremely lucky to have the kind of friends and  
20 support of office staff. I'm deeply apologetic to them and to  
21 the clients and just hope that I will be able to help them in  
22 the future again.

23 **THE COURT:** Thank you, Mr. Weichman.

24 Ms. Berkowitz, as the lawyer for the government, anything  
25 that you wish to say on the government's behalf as to the

1 sentence that I should impose?

2 **MS. BERKOWITZ:** Your Honor, we're talking about over  
3 a six-and-a-half-million-dollar fraud that this defendant  
4 committed over more than a decade. And his counsel has  
5 indicated that this is overcharged, but, Your Honor, it's --  
6 the number of victims, the type of fraud, is just astounding.

7 Not only did the defendant steal from his clients like  
8 Dr. Ashbach, like Dr. Eriksen, like Dr. Lazzaro, he also had  
9 the temerity to lie and cheat the bankruptcy court and his  
10 bankruptcy creditors. He breached that fiduciary  
11 responsibility as well, and he was rightfully charged with  
12 that.

13 He also lied to the IRS. He manipulated the IRS. He was,  
14 you know -- attempted repeatedly to get his 1.8 million --  
15 almost over two-million-dollar tax liability that he had  
16 incurred in 1999 knocked down for years without success and  
17 then filed bankruptcy, and then in order to get what he wanted,  
18 he lied. He lied to his creditors. He hid his assets.

19 You know, he says that he takes the risk to fight for  
20 Dr. Ashbach. That is an insulting statement because defendant  
21 took millions of dollars from Dr. Ashbach out of retirement  
22 accounts to go gamble. He thought nothing of that.  
23 Dr. Ashbach now, as a result, has, I think he said on the  
24 stand, a little over \$600,000 for a 70-plus -- 72-year-old  
25 physician who is now looking at continued work, a little over

1 half a million dollars to sustain himself, his elderly wife and  
2 disabled son. That doesn't seem like it is looking out or  
3 fighting for your client, Your Honor. It seems anything but.

4 Defendant's statement that he -- or this was from  
5 Mr. Bennett, that David Ashbach said that anything that was his  
6 was Jack Weichman's. I think we've established pretty clearly  
7 that's not true. David Ashbach didn't agree to that \$850,000  
8 loan, that line of credit that was taken out in his name by  
9 Jack Weichman that he didn't know about. And David Ashbach  
10 didn't agree to having his retirement accounts raided and  
11 abused by Jack Weichman. That money most certainly was not the  
12 defendant's.

13 Defendant also says he's very generous. You know, it is  
14 easy to be generous when you have stolen \$6.5 million of other  
15 people's money to go do with it as you choose, to go gamble it,  
16 to give money to charity. That's really nice. But this  
17 defendant wasn't doing it with his own money. He lived a very  
18 lavish lifestyle.

19 And you can see from the Indictment, you can see from  
20 Agent Hatagan's schedules and summaries, this defendant wasn't  
21 spending it on charitable contributions. He was spending it on  
22 Victoria's Secrets for his girlfriend, he was spending it on  
23 Rolex watches, he was spending it on \$11,000 in tickets, he was  
24 going to the Super Bowl. He kept a boat. He told the  
25 creditors, I'm selling a boat. He kept the boat.

1 Defendant is all about himself. And it's insulting for  
2 him to come in here and say -- and then rely on his poor  
3 parents who suffered greatly. There is no doubt about it. If  
4 they are Auschwitz survivors, there is no doubt that they have  
5 suffered greatly. But the defendant should have thought about  
6 that before he engaged in this conduct.

7 To have him come in here and ask, as he does in this  
8 sentencing agreement, that the Court should give him supervised  
9 release or home detention is absurd, given the depth and  
10 breadth of this defendant's conduct, given the machinations  
11 that he went to to hide what he did. The efforts were  
12 astounding. Your Honor, this defendant deserves a sentence  
13 that is -- if his level is 31, that's 108 months. That's nine  
14 years. The government's agreed to -- that's the low end of the  
15 guidelines. We believe -- we have agreed to cap the sentence  
16 at 10 years.

17 And as far as any 3553 issues, Your Honor, I would also  
18 point the Court to that ruling that was made in February 2014  
19 by Judge William Davis. There's the measure of a man you are  
20 sentencing here today. Judge Davis said -- made findings of  
21 fact that this defendant and his businesses breached their  
22 fiduciary duties as accountants and managers, withheld, hid,  
23 fabricated, destroyed evidence and engaged in self-dealing.

24 The Court also made the finding that it was impossible to  
25 obtain a full accounting of the victims' money. The Court

1 noted that Weichman's summaries of allegedly lost and deleted  
2 financial records were self-serving, inaccurate and lacking  
3 credibility. This is the man that presents himself for  
4 sentencing. And, Your Honor, based on Judge Davis's findings,  
5 based on all the evidence you have seen and defendant's  
6 conduct, we submit that an appropriate sentence for this  
7 defendant would be 108 months, which is nine years, under his  
8 sentencing guidelines.

9 **THE COURT:** All right. The United States Supreme  
10 Court has modified the Federal Sentencing Act and made the  
11 sentencing guidelines advisory. It used to be that the  
12 sentencing guidelines were mandatory. In other words, judges  
13 like myself had to follow the guidelines under almost all  
14 situations, with some very limited exceptions. But about 10  
15 years ago, the Supreme Court decided that the guidelines are  
16 better viewed as guidelines and that they are an advisory set  
17 of documents that the courts have to consider certainly in  
18 arriving at a sentence, but they are just one factor in  
19 conjunction with a whole list of other factors that I have to  
20 take into account when I decide, ultimately, what a reasonable  
21 sentence is.

22 And so I can't arrive at a sentence with a thumb on the  
23 scale in favor of the guidelines. Again, the guidelines are  
24 one factor, along with a whole host of other factors, that I  
25 have to look at when I decide what a reasonable sentence is.

1           And so, in addition to the sentencing guidelines, I have  
2   to look at what the nature and circumstances of the offense  
3   are; in other words, Mr. Weichman, what did you do that brings  
4   you here today. Obviously, I have to take that into account.  
5   I have to also look at your personal history and  
6   characteristics. So, on the one hand, I have to look at what  
7   you did. I also have to look at who you are as a person. So  
8   that encompasses a whole range of factors.

9           Ultimately, I have to impose a sentence that reflects the  
10  seriousness of the offense. I have to be concerned with  
11  promoting respect for the law, and I have to be concerned with  
12  providing a just punishment.

13          There are other factors I have to look at. There's  
14  deterrence. So there's two types of deterrence that I have to  
15  think about when I decide what an appropriate sentence is, and  
16  I have to do this in every case. One is general deterrence.  
17  That's the idea of sort of sending a message to the community  
18  that if you engage in unlawful conduct, there's going to be a  
19  real consequence to it, and hopefully that will be heard and  
20  deter other people, other would-be accountants who are out  
21  there perhaps contemplating abusing a client in some way. So  
22  that's another thing I have to be concerned with when I  
23  sentence people.

24          But there's also the concept of specific deterrence, that  
25  is, announcing a sentence that's going to prevent the defendant



1 himself from committing additional crimes. So that's another  
2 factor that I take into account.

3 I have to try to avoid unwarranted sentencing disparity  
4 among similarly situated defendants. I have to be concerned  
5 with providing restitution to the victims of the offense.

6 And so, ultimately, I have to take all of those things  
7 into account and try to arrive at a sentence that is sufficient  
8 but not greater than necessary to achieve all of the statutory  
9 goals of sentencing.

10 What I try to do in every sentencing is essentially line  
11 up the mitigating factors, line up what the aggravating factors  
12 are, take into account what the guidelines suggest, and use my  
13 best judgment to arrive at a sentence.

14 When I say this, I don't mean any disrespect to your fine  
15 lawyers, but I will say that I agree with Ms. Berkowitz that  
16 the request for a home detention-type sentence, it almost took  
17 my breath away, frankly, given the breadth of this conduct. It  
18 is just not even in my conception that this type of case would  
19 lead to a probationary-type sentence. The conduct is too vast,  
20 it is too rampant, it is too abusive, and so that's off the  
21 table, in my judgment.

22 So what are the mitigating factors here? Let's start from  
23 how did we get here? It is rather amazing to me that this sort  
24 of oak tree of litigation and oak tree of conduct starts from  
25 this acorn of this -- what I'll call a windfall, but that's

1 probably not a fair way to characterize it because you earned  
2 the money. But back in the late '90s or early 2000s, you get  
3 this five-million-dollar distribution on the sale to DaVita,  
4 and, man, you must have done a great job in achieving that  
5 result for your client. It is incredible. It is a ton of  
6 money.

7 But for whatever reasons, you say it was because the  
8 dot.com bubble burst and you got caught in a position where you  
9 didn't have the funds to pay on the tax liability. From that  
10 event, here we are some 18 years later, and all of the  
11 machinations that have occurred in between to get us to this  
12 point, it all starts, in my judgment, really, from that event.  
13 It is incredible.

14 But, of course, I have to look at the fact that you care  
15 for your mom. That's a -- wow, what a responsibility that must  
16 be. I can't imagine it, having an elderly parent that you are  
17 responsible for, and that weighs greatly on my mind. It does.  
18 It does appear to me that you have been a great father, you  
19 care about your kids, that you handled your divorce in a way  
20 that is admirable and appropriate. You put your kids first.  
21 Those are important things that I think go into who you are as  
22 a person.

23 It is very rare that I have a case where I get, I don't  
24 know, 30 or 40 letters on somebody's behalf. I have read each  
25 and every one of them, and they are very favorable. They tell,

1 I think, a compelling narrative about who you are as a person,  
2 and they are from -- what's interesting about them is they are  
3 from a whole sort of cross-section of one's life. So we have  
4 neighbors and employees, there's business friends, there's  
5 dozens of doctors who have written letters on your behalf,  
6 there's sort of colleagues that you have done business with,  
7 and clients, all of which have spoke to your generosity, the  
8 care that you bring to other people, your work ethic, sort of  
9 family first way to approach life. That's all very much to  
10 your credit.

11 You are obviously -- you were a very successful  
12 businessman. You ran this billing company. You know, you  
13 assisted doctors along the way. I was struck by Dr. Weise's  
14 letter about how you helped him out when he was moving to  
15 Porter County and ran into a beef with somebody, and you sort  
16 of helped him land on his feet, and other letters as well, that  
17 all sort of show that you cared about your clients in some  
18 respect. We'll talk in a little bit here about how in other  
19 ways you didn't.

20 You know, I don't know how the gambling addiction cuts  
21 here. Is it an aggravating factor or mitigating factor? I  
22 mean, I will talk about it. It is breathtaking. It is  
23 breathtaking that somebody can spend \$9 million in a casino.  
24 If that isn't Exhibit A of what these boats can do to people, I  
25 don't know what it is. I mean, the boats can be fun. You go

1    there once a month, you play poker, you play Blackjack, you  
2    lose a couple hundred dollars. Yeah, it is great. But when it  
3    comes to this and this kind of breadth and this kind of extent,  
4    it's just obvious to me that this is somebody who has a  
5    profound gambling addiction that, you know, roughly speaking,  
6    you probably lost some \$3 million at these boats sometime over  
7    the last decade. Man, that just takes my breath away.

8           The relationship with the victims here I don't know how to  
9    characterize. It is just odd. I don't have many cases where I  
10   have somebody who has had two-and-a-half million dollars stolen  
11   from them writing me letters saying what a great guy that  
12   person is and how they should be placed on probation. I don't  
13   understand that. I just don't understand it. And the same  
14   with Dr. Eriksen. They don't even, in some ways, view  
15   themselves as having been victimized. And it is very difficult  
16   to understand that, although I think Dr. Ashbach is kind of  
17   coming to that conclusion, and I think Dr. Eriksen as well, but  
18   her view of it is, well, that was in the past, I'm moving  
19   forward, and I'm going to let bygones be bygones. It is hard  
20   to understand that point of view, but it exists.

21           As I said, there's lots in these letters that speak to the  
22   defendant's acts of charity, to a whole variety of charitable  
23   organizations, that I have taken into account, places like  
24   Trade Winds, the Urban League, the Boys and Girls Club, the Red  
25   Cross, et cetera. There's all sorts of evidence that the

1 defendant has done a lot of things for these charitable  
2 organizations. That's very much to his credit. Those are all  
3 things that I view as mitigating when I view them in the  
4 context of the factors I have to take into account.

5 Let's talk about the aggravating factors. There's a host  
6 of aggravating factors in this case. The most obvious one is  
7 that this is a profound breach of your fiduciary duty to these  
8 doctors. It is an abuse of position of trust. These people  
9 entrusted their money with you. It was their money, not your  
10 money. And more than the breach of a fiduciary duty, more than  
11 an abuse of a trust, these were your friends. These people  
12 were your friends that you are abusing. That greatly  
13 aggravates this offense.

14 Dr. Ashbach is 75 years old, and he's still working. He's  
15 a work-a-day doctor because he has to, because he's had  
16 two-and-a-half million dollars, or thereabouts, stolen from him  
17 from his retirement account.

18 I don't know -- it is aggravated here even more in the  
19 sense that you had people who worked for you -- you drew them  
20 into the scheme. So Mr. Bercaw now is a convicted felon, and  
21 you got him to pretend that he was Dr. Ashbach to call LPL  
22 Financial to get LPL Financial to send money to the defendant,  
23 and then most of the money ends up at these riverboats. That's  
24 very aggravating in my way of thinking. It is an astounding  
25 amount of money.

1 I also point to, you know, this \$850,000 credit line. I'm  
2 convinced that Dr. Ashbach had no idea that this credit line  
3 was being taken out in his name. I know there are documents  
4 that he signed, but I think that Dr. Ashbach probably signed  
5 pretty much anything that was placed in front of him, and he  
6 did it because he trusted you because you were his friend. And  
7 now he's saddled with this -- what's left of this credit line.

8 We heard from Dr. Lazzaro, seems like a very, very nice  
9 gentleman, who in one way or another got into a really nasty  
10 dispute with the defendant. I have been told by Dr. Lazzaro  
11 that from his point of view -- and this isn't charged conduct,  
12 but I do think it goes into the 3553 factors -- that, you know,  
13 he feels like he was totally abused by the defendant, and to  
14 the point that they're in litigation, and they are in the  
15 hallway of state court, and they are being called names. And  
16 there's a judgment, actually, for conversion, which is kind of  
17 of a criminal nature. So I have taken that into consideration.

18 We have Dr. Eriksen, who has had \$750,000 stolen from her  
19 retirement account, yet she waltzes in here and basically  
20 says -- I don't know if it was a retirement account, but some  
21 account she had stolen from her. She comes in here and  
22 basically says, let's let bygones be bygones. Wow. As I said  
23 earlier, that's hard for me to understand.

24 You know, the bottom line is that the defendant treated  
25 his clients' money in those accounts as if they were his on

1 personal piggy bank. He raided their accounts, and he did it  
2 really for no other reason than to support a vicious gambling  
3 addiction. When you see the kinds of money that were being  
4 filtered through his accounts and then over to the boats, it  
5 just proves that point.

6 And as Ms. Berkowitz points out, and I agree, to some  
7 extent that takes the edge off of the generosity of the  
8 defendant because it is easy to be generous when you are  
9 dealing with other people's money, candidly.

10 And so we have a defendant who has, as I mentioned,  
11 occupied a position of trust. He's a fiduciary, and he has  
12 treated his friends in a way that I think is really  
13 reprehensible.

14 And there's the bankruptcy fraud. Bankruptcy is there to  
15 protect people from -- when life overtakes them, and it  
16 gives -- it is an effort to give people a fresh start in life.  
17 It gives them protection from creditors, but there's certain  
18 responsibilities from it. But what the defendant did was  
19 essentially use his son as a way of beating the bankruptcy  
20 rules. And so in many ways, he got all the benefits of the  
21 bankruptcy by getting the protection from creditors without any  
22 of the downside of being in bankruptcy.

23 And as counsel points out, he's sucking money out of the  
24 accounts and using it to -- on really frivolous things to the  
25 detriment of the bankruptcy creditors. These are people who

1 are owed money. And so I view that as really aggravating  
2 conduct as well.

3 And, of course, there's other things. There's the tax  
4 fraud. He's not reporting any of the income. And I'm mindful  
5 of the fact that the defendant is himself, of course, a CPA and  
6 should, of course, know better.

7 And then there's this fraud on Fifth Third Bank. I mean,  
8 it is just a rampant drumbeat of fraudulent behavior that I  
9 have to take into account, and I have, when I've arrived at the  
10 sentence that I intend to give.

11 So I'm going to now state the sentence. I will give  
12 counsel one final chance to make any final comments or final  
13 objections, but pursuant to Title 18, United States Code,  
14 Section 3551 and 3553, it is the judgment of the Court that the  
15 defendant is hereby committed to the custody of the Bureau of  
16 Prisons for a term of 96 months on each of the Counts 1, 9 and  
17 28, and a term of 60 months on Count 21, and a term of 36  
18 months on Count 34, all of those terms to be served concurrent  
19 with one another.

20 The defendant will then be placed on three years of  
21 supervised release. Those terms will be concurrent with one  
22 another on Counts 1, 9, 21, 28 and 34.

23 Within 72 hours of the judgment, or after the defendant's  
24 release from the custody of the Bureau of Prisons, the  
25 defendant shall report in person to the nearest probation



1 office for the district between the hours of 8 a.m. and  
2 4:30 p.m.

3 While the defendant is on supervision pursuant to this  
4 judgment, the defendant shall comply with the following  
5 conditions. There's four mandatory conditions: First, the  
6 defendant shall not commit another federal, state or local  
7 crime. Second, the defendant shall not unlawfully use, possess  
8 or distribute a controlled substance. Third -- there'll be no  
9 drug testing because he is a low risk of substance abuse, so  
10 that's not applicable, but the defendant will have to cooperate  
11 in the collection of DNA as directed by the probation officer.

12 There are a number of discretionary conditions that I am  
13 going to order. They are all detailed in the presentence  
14 report. The reason I'm giving each condition is fully detailed  
15 in the presentence report, and so the reason I'm giving each  
16 condition, I'm just going to incorporate by reference what's in  
17 the presentence report to my comments here in court.

18 First, the defendant shall not knowingly leave the  
19 judicial district without the permission of the Court or  
20 probation office. The probation office will provide a map or  
21 verbally describe the boundaries of the judicial district at  
22 the start of supervision.

23 Second, the defendant shall report to the probation office  
24 in the manner and as frequently as reasonably directed by the  
25 probation office during normal business hours.

1 Third, the defendant shall not answer falsely any  
2 inquiries by the probation officer, but the defendant may  
3 refuse to answer any question if the defendant believes that a  
4 truthful answer may incriminate him.

5 Fourth, the defendant shall follow the instructions of the  
6 probation officer as they relate to the conditions as imposed  
7 by the Court. The defendant may petition the Court to seek  
8 relief or clarification regarding a condition if he believes it  
9 is unreasonable.

10 Fifth, the defendant shall make reasonable efforts to  
11 obtain and maintain employment at a lawful occupation unless he  
12 is excused by the probation office for schooling, training or  
13 other acceptable reasons, such as child care, elder care,  
14 disability, age or serious health condition.

15 Six, the defendant shall notify the probation officer at  
16 least 10 days prior to any change in residence or anytime the  
17 defendant leaves a job or accepts a job. In the event that the  
18 defendant is involuntarily terminated from employment or  
19 evicted from a residence, he must immediately notify the  
20 probation office within 48 hours.

21 Seven, the defendant shall not meet, communicate or  
22 otherwise interact with a person whom he knows to be engaged or  
23 planning to be engaged in criminal activity.

24 Eight, the defendant shall permit a probation officer to  
25 visit him at any time at home or any other reasonable location

1 between the hours of 8 a.m. and 10 p.m. and shall permit  
2 confiscation of any contraband observed in plain view by the  
3 probation office.

4 Nine, the defendant shall notify the probation officer  
5 within 72 hours of being arrested or questioned by a law  
6 enforcement officer.

7 Ten, the defendant shall not enter into any agreement to  
8 act as an informant for law enforcement without the permission  
9 of the Court.

10 Eleven, the defendant shall notify the probation office  
11 within 72 hours of any material change in his economic  
12 circumstances that might affect his ability to pay any amount  
13 of restitution and fines. Additionally, defendant shall  
14 provide a probation officer with specific financial information  
15 regarding his ability to pay restitution upon written or oral  
16 request by the probation officer, made and approved by the  
17 Court. The request must be prompted by the defendant's failure  
18 to comply with the payment schedule ordered for a period of 60  
19 consecutive days, and the request must describe the specific  
20 financial information needed for determining the defendant's  
21 ability to pay.

22 Next, the defendant shall refrain from possessing a  
23 firearm, destructive device or other dangerous weapon.

24 The defendant shall be prohibited from incurring new  
25 credit charges or opening additional lines of credit without

1 the approval of the probation office unless he is in compliance  
2 with the installment payment schedule imposed for the payment  
3 of restitution or a fine.

4 Restitution shall commence -- the defendant shall commence  
5 restitution payments in the manner and as scheduled as  
6 determined by the Court. The imposed payment schedule will  
7 remain in effect until such time as the defendant, the victim  
8 or the government notifies the Court that there's been a  
9 material change in the defendant's ability to pay.

10 Restitution shall be paid at a minimum rate of \$1,000 per  
11 month commencing one month after the defendant is placed on  
12 supervision until the amount is paid in full.

13 He is advised that he may pay a portion of his restitution  
14 from wages that he earns in prison in accordance with the  
15 Bureau of Prisons Inmate Financial Responsibility Program. The  
16 defendant is also advised that participation in the program is  
17 voluntary. And the defendant should note that a failure to  
18 participate in the program while incarcerated may result in the  
19 denial of certain privileges to which he might otherwise be  
20 entitled while imprisoned and that the Bureau of Prisons has  
21 the discretion to make such a determination.

22 Any portion of restitution that is not paid in full at the  
23 time of his release shall become a condition of supervision.

24 Restitution is in the amount, as I stated earlier, 466,200  
25 to Dr. Ashbach; 2,417,000, again, to Dr. Ashbach; \$209,136.31

1 to Fifth Third Bank; and \$285,995.64 to the bankruptcy  
2 creditors, to be paid in a pro rata basis according to their  
3 claim on the bankruptcy estate.

4 I'm going to impose no fine, given the defendant's  
5 substantial restitution that I have just ordered, and I think  
6 primacy of that restitution makes ordering a fine not  
7 appropriate in this case.

8 I am going to order the defendant to pay a special  
9 assessment of \$500. That's mandatory. It is \$100 on each  
10 count to which he has pled guilty. That's due immediately.

11 As it relates to forfeiture, the defendant shall comply  
12 with the criminal or civil forfeiture of the following  
13 property: There's \$171,754.82 in an E\*Trade account that's  
14 held in the name of Ari Weichman, account number 57245773.  
15 There's a cash surrender value of two Jackson National life  
16 insurance policies in the amount of \$9,849.15 and 700 -- I'm  
17 sorry, \$7,884.95 that I believe the government has already  
18 started to forfeit. So those are deemed forfeited.

19 **MR. SZEWCIW:** Your Honor, on that regard, we have not  
20 yet. We are going to be submitting a preliminary order. We  
21 have not done so because there still was the issue of the money  
22 judgment forfeiture. So at the conclusion of this sentencing,  
23 we will then submit a formal motion regarding the forfeiture.

24 **THE COURT:** Okay. In addition to the -- or inclusive  
25 of the ones I have just stated?

1           **MR. SZEWCIW:** Inclusive, yes. And we would also, of  
2 course, request that the Court pronounce this part of the  
3 sentence, the money judgment forfeiture, in the amount of the  
4 restitution it orders pursuant to the plea agreement.

5           **THE COURT:** Yes. I will do that.

6           The sentence that I have just given is slightly below,  
7 about a year below what the guidelines actually call for. I  
8 have given a sentence below the advisory guideline range given  
9 those mitigating factors that I pointed to, but any request to  
10 go any further than that I think is not called for given the  
11 substantial aggravating factors that I have detailed at length  
12 earlier in the hearing today.

13           I will say that even if I have in some way miscalculated  
14 the sentencing guidelines, this is precisely the sentence that  
15 I would have arrived at one way or the other.

16           Counsel, have I taken into account your principal  
17 arguments in aggravation and mitigation? Ms. Berkowitz?

18           **MS. BERKOWITZ:** Yes, Your Honor.

19           **THE COURT:** Mr. Bennett?

20           **MR. BENNETT:** Yes, Your Honor.

21           **THE COURT:** All right. I do now order the sentence  
22 imposed as stated.

23           Mr. Weichman, you have heard the judgment of the Court  
24 imposing sentence upon you. Pursuant to Rule 32(j) of the  
25 Federal Rules of Criminal Procedure, I advise you that you can

1 appeal your conviction in this case if you think your guilty  
2 plea was somehow unlawful or involuntary or if there was some  
3 other defect in the proceeding not waived by your guilty plea.  
4 You also ordinarily would have a right to appeal your sentence  
5 under certain circumstances if you think it was contrary to  
6 law.

7 Now, a defendant can waive their right to appeal as part  
8 of a plea agreement. You have entered into a plea agreement  
9 where you did waive your right to appeal. Those waivers are  
10 generally enforceable, but if you think, for whatever reason,  
11 the waiver in this case is not enforceable, you have to present  
12 that theory to the Court of Appeals by filing a notice of  
13 appeal within 14 days of the judgment being entered in your  
14 case. And if you want to file an appeal, but you are unable to  
15 pay for the costs of an appeal, you may apply for leave to  
16 appeal *in forma pauperis*, which means you can pursue an appeal  
17 at no cost to you.

18 Counsel, I just remind you of your duties to perfect an  
19 appeal should your client wish you to do so.

20 Ms. Berkowitz, I assume you'll be moving to dismiss the  
21 remaining counts of the Indictment; is that true?

22 **MS. BERKOWITZ:** Yes, Your Honor, would you like me to  
23 identify those?

24 **THE COURT:** Why don't you just identify them for the  
25 record here.

1           **MS. BERKOWITZ:** The government will move to dismiss  
2 Counts 2 through 8, Counts 10 through 20, Counts 22 through 27,  
3 Counts 29 through 33, and Counts 35 through 36.

4           **THE COURT:** I will show all of those dismissed. If  
5 you would just follow it up with a written order so we have  
6 something on the docket reflecting that.

7           **MS. BERKOWITZ:** Yes, Your Honor.

8           **THE COURT:** Does the defendant want me to make any  
9 special request as it relates to Bureau of Prisons,  
10 Mr. Bennett?

11          **MR. BENNETT:** Give me a moment.

12          **THE COURT:** Sure.

13          **MR. BENNETT:** Your Honor, the only -- whatever the  
14 closest facility for you to make that recommendation.  
15 Mr. Weichman would ask the Court for a little bit of time to  
16 get his affairs in order.

17          **THE COURT:** Let's talk about that issue. I will  
18 include in the judgment and commitment order that the defendant  
19 be housed as near as possible to Northwest Indiana in a  
20 suitable facility so that he can have the continued support of  
21 his family during this difficult time for him. So I will  
22 include that in the judgment and commitment order.

23          Does the government have any objection to me giving him a  
24 reporting date, Ms. Berkowitz?

25          **MS. BERKOWITZ:** A reasonable amount of time,



1 Your Honor. I mean, this defendant has had ample opportunity  
2 to get his affairs in order here.

3 **THE COURT:** How about if I give him 60 days; is that  
4 going to give you enough time?

5 **MR. BENNETT:** Yes, Your Honor.

6 **THE COURT:** Okay. So today is May 7<sup>th</sup>. We'll say  
7 July 7<sup>th</sup> by 2 p.m., and you'll have to report to a designated  
8 facility. So the U.S. Marshals or probation will let you know  
9 what that facility is, and it is better for you to report  
10 directly there. If in the unlikely event the Bureau of Prisons  
11 does not designate a facility, you will have to turn yourself  
12 in to the U.S. Marshal in this building by no later than 2 p.m.  
13 on July 7<sup>th</sup>.

14 Okay?

15 **MR. BENNETT:** (Nodding.)

16 **THE COURT:** Anything else then, Mr. Bennett, from  
17 you, sir?

18 **MR. BENNETT:** No, Your Honor.

19 **THE COURT:** Ms. Berkowitz?

20 **MS. BERKOWITZ:** Your Honor, do we have the  
21 defendant's passport, either -- both his Israeli passport and  
22 his United States passport?

23 **THE COURT:** I don't know. I would have thought those  
24 would have been surrendered at the time of the arraignment many  
25 years ago.

1 Mr. Beier, can you help me on that one?

2 **PROBATION OFFICER:** That would be procedure,  
3 Your Honor, but I can check on it.

4 **THE COURT:** Okay. To the extent he hasn't done that,  
5 I'm going to order that.

6 **MR. BENNETT:** I think he has done that.

7 **THE COURT:** Okay. The magistrate judges usually do  
8 that, but -- all right.

9 I know it is a tough day for you, Mr. Weichman. All I can  
10 do is wish you well. Good luck, sir.

11 (A recess was had at 3:18 p.m. )

12 \* \* \*

13 (End of requested transcript.)

14 **CERTIFICATE**

15 I, Stacy L. Drohosky, certify that the foregoing is a true  
16 and correct transcript from the record of proceedings in the  
17 above-entitled matter.

18 Date: August 8, 2018

19 S/Stacy L. Drohosky  
20 S/STACY L. DROHOSKY  
21 Court Reporter  
22 U.S. District Court  
23  
24  
25

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